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MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 5th August 1953

S.R.O. 1590.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government publishes the following award of the Industrial Tribunal, Bombay, in the industrial dispute between the Bombay Port Trust and its employees.

BEFORE MR. S. H. NAIK, INDUSTRIAL TRIBUNAL, BOMBAY

Reference (IT-CG) No. 2 of 1952

ADJUDICATION

BETWEEN

The Bombay Port Trust, Bombay

AND

Its employees

In the matter of compensatory allowance, reinstatement of Shri S. B. Ansurkar, demotion of crane drivers, retirement and retrenchment benefits, etc.

APPEARANCES:

Mr. J. P. Thacker with Mr. N. K. Petigara of M/s Mulla & Mulla, Solicitors for the Bombay Port Trust.

Mr. S. S. Kavalekar with Dr. S. G. Patel and Mr. S. B. Ansurkar, Secretary and Asstt. Secretary respectively of the Bombay Port Trust Employees' Union for the employees.

AWARD

This is a reference made by the Central Government under section 10(1)(c) of the Industrial Disputes Act, 1947. The reference relates to a dispute raised by the Bombay Port Trust Employees' Union (hereinafter called the Union) on behalf of the workmen in the Engineering Department of the Bombay Port Trust (hereinafter called the Port Trust). The dispute concerns nine demands made by the Union which have been set out in the schedule annexed to the order of reference. The Union alleges that most of the demands made by it arose out of certain unfair labour practices adopted by the Port Trust and they are not intended to secure any fresh benefits to the workmen concerned. It states that the dispute could not be settled on account of the unreasonable and unbending attitude of the Port Trust authorities to sit and discuss across the table the points of difference and their refusal to participate in the conciliation proceedings.

2. The Port Trust has denied the above allegations. It states that during the period of the last World War the port of Bombay was free from any major

labour trouble as Government had declared the port transport as an essential service. After the cessation of the hostilities, it is alleged, labour troubles began and the workers used to stop work at frequent intervals on flimsy grounds and paltry excuses. The Port Trust has produced a statement (Appendix 1 to its written statement) to show that the employees concerned in this dispute had stopped work for short or long intervals on not less than 15 different occasions from the 22nd July 1946 to the 31st August 1950. There was a long drawn out strike by the workers of the Engineering Department which commenced on the 24th December 1947 and continued till the 8th February 1948, because the Port Trust refused to grant certain holidays demanded by the Union. During the continuance of the strike, it is alleged, the workers resorted to violence, and it was feared that there would be even acts of sabotage, and therefore, military aid had to be requisitioned.

3. Soon after the strike was withdrawn the cranemen started adopting 'go-slow' tactics and other workmen of the Hydraulic Establishment and workshops refused to work overtime when asked to do so. As a result of a discussion which the Chairman of the Port Trust had with the Union representatives normal working was restored. Again after a period of about 4—5 months, it is alleged, the crane drivers resorted to 'go-slow' tactics in November 1948, because one of the crane drivers who was inefficient and careless and who was working his crane in a dangerous way, inspite of repeated warnings, was served with a notice of discharge.

4. Night-shift working was started from the 1st January 1949 and the Chief Engineer of the Port Trust framed certain rules for working of the crane drivers by rotation at different berths. Dissatisfied with the new system of work all the crane drivers went on strike on the 30th March 1949. But they themselves were not agreed on their demand. The drivers in the Alexandra Dock wanted daily rotation whereas those in the Princess and Victoria Docks did not desire any such change and therefore the original system of work had to be restored.

5. A committee consisting of the representatives of the Port Trust and the Union appointed to suggest ways and means for the smooth working of the Incentive Bonus scheme analysed the cause of the reduced out put in their meetings held on the 16th March and 1st April 1949. The question of "speed money" which used to be paid to crane drivers was discussed and the Stevedores' Association agreed to induce its members not to pay any "speed money" to the crane drivers for a fortnight from the 1st April. The crane drivers replied by indulging in their usual 'go-slow' policy.

6. There was a good deal of congestion in the docks by about the middle of June 1949 and the situation became to serious that the Secretary to the Government of India, Ministry of Transport, had to come down to Bombay to examine the causes of congestion. As a result of the discussion that he had with all concerned it was decided to introduce a third shift for discharging food grains and to extend the hours of work from 12.30 a.m. to 3.30 a.m. in the case of general cargo, as was the case prior to the 1st January 1949, and pay overtime to the workmen for such extended hours of work. The Union refused to work overtime for two hours and the crane drivers refused to work the third shift.

7. The situation, it is stated, continued to grow worse and therefore Mr. Jaleshwar Prasad, the then Chief Labour Commissioner (Central) had to come down to Bombay on the 12th July 1949. He held several conferences with the representatives of labour and the Port Trust when the Union submitted demands regarding (a) classification of crane drivers (b) free housing (c) minimum outturn bonus of Rs. 23 per month (d) promotion of nowaganies to the posts of crane drivers (e) speed money, (f) appointment of night relivers and (g) grant of special compensatory allowance for loss of overtime. He came to the conclusion that the work of the cranemen had very much deteriorated since 1946 and 1947 and there was no doubt that the workers had adopted a 'go-slow' policy. However, in order to have a contented labour force and to ensure peace and harmony in the working of the port he made certain suggestions on the demands made by the Union which were graciously accepted by the Chairman. The accepted proposals were embodied as terms of a settlement reached between the parties on the 18th July 1949 which was later on accepted and affirmed by a Resolution of the Trustees. Some of the demands in this reference are based upon this agreement and that is why the Union alleges in the statement of claim that by raising this dispute the Union does not seek to secure any new or fresh advantages to the workers. The Port Trust, on the other hand, maintains that up to July 1949 it had to follow the policy of appeasing the crane drivers and other members of the Hydraulic Establishment which has proved detrimental to discipline among the workers. It states that the cranemen occupied a key

position in the working of the port and that is why they could dictate their own terms.

8. When there was congestion in the docks in the middle of June 1949 the authorities concerned held consultations and decided, as stated above, to introduce a third shift. This third shift is manned by purely casual labour and the cranemen employed therein are outsiders, who have had the experience of working in the port of Karachi. This third shift has served as a safety valve and a convenient weapon in the hands of the Port Trust to hold its own against the Union which, prior to the introduction of the third shift, used to dictate its own terms.

9. In adjudicating upon the present demands we have to bear in mind the above background of the present dispute and the circumstances under which the agreement dated the 18th July 1949 came to be entered into.

10. The Union contends that the Port Trust refused to participate in the conciliation proceedings regarding 3 out of the 9 demands referred to me for adjudication and, therefore, the Conciliator reported failure of his precedings to Government and, with regard to the remaining, they participated because the Government of India wanted them to participate in the conciliation proceedings, but their participation was only to tell the conciliator that what they did was right and just and that they could go no further. With regard to demands Nos. 1 to 3 Mr. Thacker has raised a preliminary objection on behalf of the Port Trust. He states that these 3 demands were not included in the set of demands made by the Union in their letter dated the 12th February 1951 and that the Regional Labour Commissioner (Central) did not discuss these demands with the Port Trust authorities. He states further that the Port Trust is not aware of the conciliator having submitted a report to Government about his failure to bring about a settlement on these 3 demands and he did not send a copy of his report to the Port Trust. Mr. Thacker, therefore, contends that Government had no material before them to apply their mind to the consideration of demands Nos. 1 to 3 and, therefore, the reference of those demands to this Tribunal for adjudication is not valid.

11. In its letter Ex. B-9 dated the 10th January 1951 sent by the Union to the Regional Labour Commissioner the Union referred to the first 3 demands and stated that the Port Trust had refused to discuss those demands with the Union representatives. The Union, therefore, requested the Rgional Labour Commissioner to refer the dispute to Government. In the concluding portion of its letter Ex. B-9/12 dated the 12th February 1951 to the Regional Labour Commissioner the Union stated that it had already referred to him demands Nos. 1 to 3 in its earlier letter. The Regional Commissioner in his letter dated the 26th March 1951 addressed to the Union stated that he had submitted a special report to Government with regard to demands Nos. 1 to 3 after making the necessary inquiry into the matter in accordance with the orders of Government. It is clear from this report (Ex. B-9/12) that the Chairman of the Port Trust was not inclined to consider any of the demands made by the Union as he thought that what he had done was right and proper. Government had, therefore, sufficient material before it including the special report made by the Regional Commissioner to apply its mind to the demands made by the Union.

12. If a Conciliation Officer is not able to induce the parties to come to a settlement after doing all that is necessary for the purpose he has to submit a report to Government under sub-section 4 of section 12 of the Industrial Disputes Act, 1947, setting forth *inter alia* the reasons on account of which in his opinion, a settlement could not be arrived at. If on consideration of such report, Government is satisfied that there is a case for reference to a Tribunal, it may make such reference under sub-section 5 of that section.

13. The evidence adduced in this case shows that the conciliator had submitted a report as required by the above sub-section. Government is not required to state in writing, before making a reference, that it has considered the report made by the Conciliation Officer. All that need be proved is that Government had before them the report made by the Conciliation Officer under sub-section 4 and, if that is proved, and if the reference is made, it must be presumed that Government had considered the report. There is, in my opinion, no substance in the preliminary objection raised by Mr. Thacker.

14. Having disposed of the Preliminary objection raised on behalf of the Port Trust, I shall now proceed to adjudicate upon the demands made by the Union.

DEMAND NO. 1.

"Fresh conditions should not be imposed for payment of special compensatory allowance to crane drivers and the allied staff."

With effect from the 1st January 1949 the Port Trust introduced a second shift in the docks. With the introduction of the second shift the dock working hours were fixed as under:—

I Day Shift:—8 A.M. to 12 Noon and 1 P.M. to 5 P.M.

II Night Shift:—5-30 P.M. to 8.30 P.M. and 9 P.M. to 12 Midnight.

This arrangement resulted in a reduction of the overtime work that was being done by a number of categories of workmen mainly in the Hydraulic establishment including the crane drivers and consequently there was a reduction in their total earnings. In order to make up for the fall in the earnings of these workmen the Union demanded a special compensatory allowance. The Port Trust granted this allowance on certain conditions. One of the conditions was that the allowance would be withdrawn if a workman refused to do overtime work. The Union alleges that this condition was not acceptable to it as it was opposed to modern trends in labour management. The Union states further that the crane drivers had been in the first instance denied the benefit of the special compensatory allowance and it was only when the Union intervened that it was extended to the crane drivers also. The Union states that in the first week of November 1949 the Port Trust attached a new condition to the grant of the special compensatory allowance by directing that if an employee eligible for special compensatory allowance, does overtime work in any month, he would draw the actual overtime allowance earned or the compensatory allowance *whichever was greater*. The Union complains that this new condition imposed by the Port Trust virtually amounted to a denial of the benefit of the special allowance which according to it, did not fully compensate the workmen concerned for the loss they sustained on account of the introduction of the second shift. It states further that special compensatory allowance was granted to the crane drivers as a result of an agreement brought about by the Chief Labour Commissioner and there was no mention of any such condition in the agreement as was later imposed by the Port Trust. The Union, therefore, prays that this new condition should not be imposed.

15. In order to decide the issue raised by demand No. 1 it is necessary to have a brief survey of events that preceded the grant of the special compensatory allowance. The workmen concerned with this demand are cranemen and members of the allied staff in the Hydraulic establishment such as fitters, nowaganies, mazdoors, hoistmen, boiler-makers, etc. Prior to the introduction of the second shift on the 1st January 1949 cranemen in the day shift used to do over time work on week days for 1 hour in the morning and for half an hour in the evening. Work done after 1 P.M. on Saturdays and work done on Sundays and holidays used to be treated as overtime and paid as such. Cranemen in the night shift used to do over time work for 2 hours before and for half an hour after the night shift. The crane drivers booked for the whole night shift from 7.30 P.M. to 3-30A.M. used to be given 3 hours stand by over-time from 3-30 A.M. to 6.30 A.M. Besides, prior to the 1st January 1949 crane drivers were expected to work from 8 A.M. to 6 P.M. the next day at least 3 times in a week. Thus, they had to work continuously for 34 hours at a stretch three times a week. This system of working was obviously detrimental to the health and well being of the workers but the Port Trust states that whenever the question of revising the hours of work was taken up it was opposed by the Union on the ground that it would curtail their over time earnings.

16. As a result of the discussion that the Chairman of the Port Trust had with the President of the Union and the Chief Labour Commissioner (Central) on the 21st June 1948 it was agreed that the scales of pay for Hydraulic Crane Drivers should be provisionally fixed as follows:—

35 Cwt. Crane Drivers .. Rs. 50-2-76.

5 and 6 ton Crane Drivers.. Rs. 60—2½—75—3—90.

In this connection it is important to remember that the cranemen working under the Calcutta Port Trust had at this material time only one scale of pay for all the cranemen which was much lower than what this Port Trust agreed to. Furthermore, the Port Trust had from 1943 revised the scales of pay of crane drivers from time to time and had prescribed a scale of Rs. 40—2—50 and Rs. 45—2—55 from 1st May 1946 for the two categories of cranemen referred to above (Ex. A-7). The Chairman agreed to accept the two higher scales given above on the distinct understanding that the new scales would be in final settlement of

a claim for revised scales of pay put forth by the cranemen and the prospective loss of over time work which was likely to result from the introduction of the II shift from the 1st January 1949 The Chairman made this position quite clear in the conference held with the representatives of the Union both on the 21st June and 26th July 1948 and added that he had fixed the scales of pay for the cranemen in view of the loss of over-time earnings which they would suffer on the introduction of the II shift with effect from the 1st January 1949

17 The Union accepted the revised scale of pay but stated that they were in adequate and the Port Trust should improve upon it sometime in future It, however, pleaded that the revised pay scales of crane drivers should be brought into operation with retrospective effect from the 1st January 1947, as the pay scales of other workmen had been given effect to from that date and not from the 1st January 1949 i e the date of introduction of the II shift During the course of the correspondence that followed on this question various alternatives were suggested to the Union but they were not accepted by them Eventually, the Chief Labour Commissioner with whom the matter was discussed by the Chairman suggested that the revised pay scales for crane drivers should be brought into effect from the 1st January 1947 Although the Chairman thought that there was no justification for accepting that suggestion, he proposed to the Trustees that it might be accepted as a gesture of goodwill to create a favourable atmosphere for the operation of the Incentive Bonus Scheme and to avert the threatened strike of the dock labourers The Trustees accepted the Chairman's recommendations in their meeting held on the 28th September 1948

18 The Union insisted that the Incentive Bonus Scheme as applied to crane drivers should be introduced simultaneously with the II shift There was some controversy between the Union and the Port Trust on this question Ultimately in October 1948 Government of India appointed a Conciliation Board to go into the question of the introduction of the Incentive Bonus Scheme and double shift working by the crane drivers At their instance a settlement was reached between the Port Trust and the Union on 13th November 1948 by which the Trustees agreed to apply the Incentive Bonus Scheme to the crane drivers with certain modifications in regard to the output in excess of the "Datum Line Tonnage" on a percentage basis The Port Trust also agreed to introduce the II shift and the Incentive Bonus Scheme as modified under the settlement from the 1st January 1949 simultaneously Double shift working was accordingly started with effect from the 1st January 1949 in conjunction with the Incentive Bonus Scheme

19. The allied staff in the Hydraulic Establishment such as fitters, nowganies, mazdoors, hoist men, boiler makers etc, were not included in the Incentive Bonus Scheme as they were not directly concerned with the loading and unloading of cargo. But their hours of work had to be regulated to fit in with the changed hours of work introduced by the II shift Due to the changed hours of work introduced from 1st January 1949 under the II shift the workmen referred to above lost some of their over-time earnings. The Union, therefore, made a grievance of this to the Chairman of the Port Trust (Ex. B-10). The Chairman put up a note on the 7th March 1949 in which he pointed out that both the Chief Engineer and the Chief Labour Officer were agreed that the above mentioned workmen had suffered in their earnings as a result of the two shift working and, therefore, they should be paid a special allowance to reimburse them for their loss in their overtime earnings The Chairman pointed out further that the Chief Labour Commissioner with whom the matter was discussed had taken the same view The Chairman, therefore, recommended the following amounts as "Special Compensatory Allowance" to the different categories of workmen.

Hoist men Rs. 6 per month.

Nowganies and Muccadams Rs. 11 per month.

Labourers Rs 10 per month

Chain boys Rs 8 per month.

Fitters Rs 20 for those whose pay was between Rs. 55 to 75.

Rs 25 for those whose pay was between Rs. 75 to 100.

Rs 30 for those whose pay was between Rs. 100 and over.

The Trustees accepted the above recommendations in their meeting held on the 26th April 1949 and sanctioned the grant of the Special Compensatory Allowance from the 1st January 1949 on the following conditions:—

(1) It will be admissible only to those who were engaged on the work referred to for a period of not less than 6 months prior to 1st January 1949.

(2) The allowance will be paid only while on duty and will not form part of pay for purposes of Provident Fund, Special Contribution, Leave Allowance, Over-time, etc.

(3) It will cease in the case of a workman who is promoted to a higher post or is transferred to any other section in which the conditions of work are different.

(4) It will be liable to be withdrawn if a workman refuses to do over time work in the morning between 7 and 8 and at any other time, if and when required.

The above decision of the Port Trust was conveyed to the Union by a letter dated the 31st May 1949. The letter made it clear that the Special Compensatory Allowance was admissible only to certain specific number of the then existing men in the relative sections and no new entrants would be entitled to it. The Union, while accepting the Trustees' decision, pointed out that the allowance granted to hoistmen, muccadams and chain boys were not adequate and that over time work should not be compulsory. It suggested that the allowance should be admissible to every worker who was in employment prior to 1st January 1949. The Port Trust turned down the request made by the Union by its rejoinder (Ex. B-10/23) dated the 5th September 1949.

2. In the meanwhile a controversy was raging between the Union and the Port Trust regarding the loss of earnings to crane drivers brought about by the introduction of the II shift in spite of bringing into effect simultaneously with it the Incentive Bonus Scheme. The crane drivers had been excluded from the operation of the Special Compensatory Allowance. The Union complained that the benefit which the Incentive Bonus Scheme had brought on to crane drivers was only negligible (Ex. B-10/14). There was also a dispute regarding the classification, minimum bonus, speed money and house allowance claimed by the Union for the crane drivers. The Union claimed Special Compensatory Allowance for the crane drivers also. All these issues were referred to Mr. Jaleshwar Prasad, the Chief Labour Commissioner (Central). He held consultations with the Chairman of the Port Trust and the representatives of the Union. The decision arrived at by him on all the above issues was communicated to the Port Trust under his letter dated the 18th July 1949 (*see* annexure to T. R. No. 602 dated 2nd August 1949, Appendix 3). This letter forms an important landmark in the history of labour relations with the Port Trust. Without referring to the recommendations made by Mr. Jaleshwar Prasad in detail I shall refer only to such of them as are necessary for my present purposes.

21. With regard to the minimum outturn bonus of Rs. 23 per month claimed by the Union to each worker the Chief Labour Commissioner suggested a reduction of 6¼ per cent. in the datum line and an increase in the rate of bonus at twice the normal rate for additional tonnage handled by the workers including the crane men. He expected that the improvement suggested by him would bring to each worker 3 times more remuneration than what he got under the previous scheme. With regard to speed money he went to the extent of saying that he had no objection to stevedores paying "Bakshis" to the crane men if they finished their work in a shorter time than usual. With regard to special compensatory allowance claimed by the crane men he recommended that crane men who were in service on 1st January 1948 should also be paid such allowance amounting to Rs. 15 per month with effect from 1st January 1949. But he lost sight of the fact that the Port Trust had accepted the scales of salary for the crane drivers suggested by the Union on the clear understanding that they were in final settlement of two outstanding issues, namely, the revision of pay scales and the loss of over time earnings brought about by the introduction of the II shift. He also ignored the fact that he had recommended an increase in the rates of incentive bonus and a reduction in the datum line output.

22. In his note to the F and G Committee dated the 19th July 1949 on the Chief Labour Commissioner's proposals put up by the Chairman he pointed out that there was really no justification for the grant of any compensatory allowance to crane drivers but he had agreed to grant it as a gesture of goodwill. The F and G Committee which considered the Chairman's note came to the conclusion that there was no other alternative but to accept the recommendations made by Mr. Jaleshwar Prasad in his letter dated the 18th July and they directed that the expenditure incurred on the payment of Special Compensatory Allowance to crane drivers should be sanctioned as a pressing emergency.

23. During the discussion that took place in the Trustees' meeting on the Chief Labour Commissioner's recommendations the Trustees animadverted to some of the recommendations made by him. Winding up the debate the Chairman observed that the reduction of 6¼ per cent. in the datum line output was

anly appeasement of labour intended to secure their godwill and co-operation. On such an outspoken exposition of his policy made by the Chairman the Trustees accepted the recommendations made by Mr. Jaleshwar Prasad which had been tentatively agreed to by the Chairman.

24. Prior to 1st January 1949 hoistmen in warehouses as well as the transit sheds in Alexandra Dock used to be given half an hour's over time from 5.30 to 6 p.m. It was stopped from 1st January 1949. From 16th August 1949, however, due to the heavy congestion in the warehouses the hoist men working there were asked to do one hour's over time from 5 to 6 P.M. The hoist men in the warehouses, therefore, began to earn more over time wages since 16th August 1949 than what they used to earn prior to 1st January 1949. The Port Trust, therefore, refused to pay Sepecial Compensatory Allowance to the 14 hoistmen engaged in the warehouses. The Union made a grievance of this stoppage of Special Compensatory Allowance to the hoistmen concerned by its letter (Ex. B-10/24) dated the 13th October 1949. The Port Trust pointed out in its reply (Ex. B-10/25) dated the 3rd November 1949 that as the hoist men in question had drawn over time allowance more than the amount of the compensatory allowance there was no justification for payment of Special Compensatory allowance to them in addition to the over time wages. Pursuant to this decision the Port Trust attached the following condition to the grant of the Special Compensatory Allowance in addition to the four already attached which have been mentioned above. "If an employee eligible for Special Compensatory Allowance, does over time work in one month, he will draw the actual over time allowance earned or the compensatory allowance whichever is greater." The Union protested to the Port Trust against this new condition but to no purpose and therefore it has made the demand under discussion.

25. Prior to January 1949 shifting of cranes was not done in the evening. Subsequently it was found that it was necessary to have stand-by shifting gangs to shift cranes after 5 p.m. in order to facilitate discharge of cargo from the hatches. Over time work was therefore required to be done by fitters and was done after 5 p.m. As the over time earnings of fitters, nowganies and mazdoors increased after January 1949 the Port Trust refused to pay them special compensatory allowance whenever their over time earnings exceeded such allowance, in accordance with the condition newly imposed by them.

26. It will be clear from the above history preceding the grant of the special compensatory allowance that it was intended to make up the loss of over time earnings which accrued to crane men and allied staff in the Hydraulic Establishment on the introduction of the II shift. If so, there is little justification for paying such allowance to those employees whose over time earnings exceed it.

27. It must be remembered that work in a port does not always remain constant. It varies from time to time according to the number of ships arriving and the nature of cargo brought by them. The II shift was introduced in order to obtain a quicker turn round of ships and adjustments in the working of it had to be made later on to suit the conditions then existing. If the Special Compensatory Allowance was granted on account of change of conditions brought about by the II shift it could certainly be adjusted to suit the changed conditions that came to exist after the introduction of the II shift. If the purpose behind the grant of special Compensatory Allowance was the loss of over time earnings brought about by the introduction of the II shift there was no scope for its application in the case of those employees who earned more over time wages than before the introduction of that shift.

28. Mr. Kavalekar stated that the Port Trust's refusal to pay Special Compensatory Allowance to those whose over time earnings were more than such Allowance gave rise to an anomaly inasmuch as the employees who did not over time work got the allowance, while those who did such work, got only over time wages. But it is worthy of note that the employees who were required to do over time work after the introduction of the II shift were rotated every fortnight so that the employees so rotated got over time wages and Special Compensatory Allowance by turns. It would have been unjust and inequitable for the employees to have both the Special Compensatory Allowance and over time wages if the former was intended to be a substitute for the latter. The grant of the Union's request would have imposed an unreasonable financial burden on the Port Trust.

29. It was strenuously urged by Mr. Kavalekar that the Port Trust did not attach the condition under consideration when it first started giving such allowance but the condition was a later invention intended to evade the grant of the Special Compensatory Allowance. He also urged that it was a flagrant breach

of the agreement reached by the Chairman with the Union in the presence of Mr. Jaleshwar Prasad, the Chief Labour Commissioner, on the 18th July 1949.

30. It is true that the condition under consideration was not one of the conditions initially attached to the grant of the Special Compensatory Allowance. It was only when some of the employees in the Hydraulic Establishment were required to do more over time work than what they did before the Port Trust realised the real implication of the grant of that Allowance. While starting to grant the Allowance the actual amount of over time wages earned during 6 months preceding it had been taken into account and the scale of Compensatory Allowance was based upon such earnings. The Special Compensatory Allowance, as its name implies, was intended to reimburse the employees for loss of over time earnings and when there was no such loss there was no justification for its continuance. The new condition was inherent in the original grant itself. It was in no way derogatory to or in conflict with the original grant.

31. The extension of the scheme of Compensatory Allowance to the Crane drivers was at the instance of Mr. Jaleshwar Prasad. As pointed out already he was bent upon bringing about peace between the Port Trust and their employees at any cost. The proceedings of the F. G. Committee held on his recommendations and the discussion that took place in the Trustees' meeting make it abundantly clear that the Port Trust surrendered in favour of the employees, being helpless. The grounds on which Mr. Jaleshwar Prasad, supported the cranemen's demand for Special Compensatory Allowance make interesting reading. He said: "It has been represented to me by Mr. Ashoka Mehta that fitters and others have been given some compensation for loss of working over time. The cranemen are also to be given over time for the loss of their time. The cranemen will be given a compensatory allowance of Rs. 15 a month." It is clear that he recommended Compensatory Allowance to the crane drivers because such allowance had been granted to other workmen in the Hydraulic Establishment. But I have shown above that the scale of pay for the crane drivers had been fixed after taking into consideration their loss of over time earnings. The grant of Rs. 15 a month does not seem to have been based upon any statistical data.

32. Lastly, it was urged that the recent trend in the industrial world is to discourage over time work but the new condition imposed by the Port Trust seeks to perpetuate it. The Port Trust introduced the II shift with a view to bring about a healthy change in the working conditions of its employees. Prior to the introduction of the II shift the employees in the Hydraulic Establishment had to do considerable over time work and the crane drivers had to work continuously for 34 hours at least three times in a week. After the introduction of that shift it is only a few employees who had to put in more over time work by rotation than before. Having regard to the nature of the port work it is impossible to stop over-time work altogether. Besides, the Port Trust states that it does not force over time work on its employers who are not in a position to undertake it. One of the four conditions attached to the grant of the Special Compensation Allowance was that it would be withdrawn if the employees refused to do over time work. The Union has asked for both over time wages and Special Compensatory Allowance. This shows that the Union is not opposed to over time work. In fact, the Union wants the workers to earn as much over time wages as possible and in addition have the Special Compensatory Allowance. I cannot therefore accede to the demand made by the Union. The demand is rejected.

Demand No. 2—Reinstatement of Mr. S. B. Ansurkar, the Assistant Secretary of the Union.

33. Mr. Ansurkar joined the service of the Port Trust in the year 1942. Before that, it appears, he was serving in the General Motors, India, Limited. He took a keen interest in the activities of the Union and was closely associated with it. He was an office bearer of the Union. In the strike of the employees of the Hydraulic Establishment which commenced from the 26th December 1947 and continued till the 8th February 1948 he took a leading part. In view of the services rendered by him to the Union the latter made him its Assistant Secretary. Since then he was working as Assistant Secretary of the Union. He was the only employee of the Port Trust who was an office bearer of the Union.

34. Mr. Ansurkar not only took a leading part in the activities of the Union but he also helped, according to the Union, the Port Trust authorities in detecting cases of bribery and corruption among the Port Trust Officials. The Union alleges that the Port Trust officers, therefore, bore a grudge against him and wanted to bring him into trouble somehow or other. In 1947 the Port Trust

authorities transferred Mr. Ansurkar from the Electric Department, Northern Division, where he was working to the Southern Division with a view to render his union activities ineffective. But the Union intervened on his behalf and, at its instance, Mr. Ansurkar was retransferred to the Northern Division within a month from the date of his transfer.

35. The Port Trust alleged that Mr. Ansurkar distributed to the Port Trust workers during office hours on the 7th March 1950 leaflets containing serious allegations against some of the Port Trust officers of the Engineering Department at Merewether Dry Dock and other places. The Port Trust, therefore, served on him a charge sheet dated the 8th March 1950. He received it on or about the 13th March 1950. On or about the 15th March Mr. Ansurkar denied the charge made against him. He stated that during office hours on the 7th March, he was doing the duty entrusted to him by the chargeman of his department. An inquiry was held against Mr. Ansurkar by two officers of the Port Trust on the charge framed against him. During this inquiry Mr. Ansurkar was neither allowed to bring his witnesses nor permitted to cross-examine those brought by the Port Trust. The Union, therefore, made a grievance about this to the Port Trust authorities. On the 27th April 1950 Mr. Ansurkar received a memorandum from the Chief Engineer informing him that his services were no longer required from the 1st June 1950. On a consideration of the grievance made by Mr. Ansurkar the Chairman was convinced that there was considerable force in the contentions urged by him. He came to the conclusion that it was improper that one of the members of the Board of Inquiry should have been the Mechanical Superintendent of the Engineering Department against whom serious allegations had been made in the pamphlets distributed by Mr. Ansurkar. He also held that the inquiry was vitiated on account of the fact that Mr. Ansurkar was not allowed to cross-examine the witnesses who gave evidence against him and the Inquiry Board did not examine the witnesses tendered by him in his defence. By an order therefore dated the 30th May 1950 the Chairman set aside the findings of the Inquiry Board and the order passed by the Chief Engineer discharging Mr. Ansurkar. He appointed a new Board of Inquiry consisting of Mr. Batuk Mehta, the Chief Labour Officer of the Port Trust, and Mr. V. Vaz, Deputy Manager, Docks Department, and they were asked to report their findings to the Chairman as soon as possible after making a through inquiry. The Chairman stated in his order that he would pass such orders on the findings as he might think fit.

36. On the 6th June 1950 the Board served upon Mr. Ansurkar a chargesheet containing the following two charges and required him to show cause within three days why disciplinary action should not be taken against him:

Charge 1.—That he distributed prejudicial leaflets containing serious allegations against certain officers of the Bombay Port Trust Engineering Department among Bombay Port Trust employees at the Merewether Dry Dock shortly after 8 A.M. on 7th March 1950; and

Charge 2.—That he also distributed the aforesaid leaflets among Bombay Port Trust Employees at the Electrical Establishment, Northern Division, Bombay Port Trust Workshops, during working hours on 7th March 1950.

37. Mr. Ansurkar by his reply dated the 8th June 1950 denied the above charges and affirmed that he distributed no handbills during working hours on the 7th March 1950 as alleged by the Port Trust. The Board consisting of the abovenamed two officers commenced its inquiry on the 19th June 1950 and finished it on the 26th July. A representative of the Union was permitted to remain present at the time of the inquiry but he was not allowed to cross-examine the witnesses.

38. Mr. Ansurkar was allowed to cross-examine the witnesses tendered against him and to examine his own witnesses in his defence. He was also furnished with copies of the statements recorded from day to day. Mr. Ansurkar, however, complained in his written statement that even the principles of natural justice had not been observed by the Board in holding the inquiry. He stated (a) that the first charge regarding the distribution of the leaflet at the Merewhether Dry Dock was entirely a new one, (b) that he was handicapped in his cross-examination as copies of the evidence given by the witnesses in the earlier inquiry were not supplied to him, (c) that at certain stages in the inquiry he was denied the assistance of the Union's representative, (d) that there was no independent person from outside on the Board and (e) that the Board which held the inquiry itself framed charges and examined certain witnesses who had not given evidence in the first inquiry. The Board overruled all these objections. On objection (a) the Board held that the charge as framed in the earlier inquiry

did refer to distribution of leaflets to the workers at the Merewether Dry Dock and other places although the evidence led in that inquiry referred to the distribution of leaflets at "other places", namely, the Port Trust Workshops. It further held that it was within its discretion to frame such charges as were warranted by facts in a *de novo* inquiry and to examine witnesses who would throw light on the charges framed.

39 On objection (b) the Board was of the opinion that Mr. Ansurkar had the fullest opportunity to cross-examine the witnesses and, as the proceedings in the earlier inquiry had been quashed by the Chairman, no cognisance thereof could be taken either by the Board or by Mr Ansurkar. They pointed out that even so Mr. Ansurkar tried to contradict certain witnesses by referring to their statements in the earlier inquiry

40. With regard to objection (c) the Board pointed out that Mr. Ansurkar's contention that he was not allowed the assistance of a union representative in the absence of Dr Shanti Patel, the General Secretary of the Union, who had been allowed to be present at the inquiry, at certain stages of the inquiry was not correct They stated that Mr Ansurkar's request to the Board was to give him the assistance of one Mr Vyas, a practising lawyer who was not a union representative, and that request was rightly disallowed by the Board The Board however, it is alleged, asked Mr Ansurkar to bring another representative of the Union in the absence of Dr Shanti Patel, but Mr. Ansurkar did not avail himself of that offer

41. On objection (d) the Board's view is that a departmental inquiry is, as a rule, conducted by the officers of the department concerned and that in order that the inquiry should be impartial the Chairman had ordered that it should be held by two officers who were entirely independent of the Engineering Department in which Mr Ansurkar was serving.

42. With regard to Mr. Ansurkar's last objection that the Board was both the prosecutor and the judge, it held that in a departmental inquiry the Board has to frame charges on the *prima facie* evidence made available by the complaining department and to carry out the examination-in-chief of the witnesses produced before it. The Board observed that the procedure applicable to a Court of Law cannot strictly be applied to a Board holding an inquiry.

43. On the above grounds the Board overruled all the objections raised by Mr. Ansurkar and, on the evidence adduced before it, came to the conclusion that Mr. Ansurkar was guilty of the first charge. On the second charge it held that he was guilty of having distributed copies of the leaflets among the employees of the Stores Room, but not at the Timekeeper's Office in the Electrical Department at the Workshops. They submitted these findings to the Chairman under a report dated the 5th August 1950. The Chairman accepted these findings subject to the observation that the finding of the Board that Mr. Ansurkar was not guilty of having distributed leaflets at the Timekeeper's Office was "unduly generous". He held that the distribution of the copies of the pamphlets which were highly objectionable and defamatory was subversive of all discipline. He discredited Mr. Ansurkar's plea that the inquiry against him was the result of a plot by the departmental officers to victimise him, because he had brought to light corrupt practices obtaining among them. The Chairman observed that the information supplied by Mr. Ansurkar against two of the Port Trust employees had been found to be false after a detailed and searching inquiry was made and Mr. Ansurkar could not claim any privilege merely because he happened to be an office bearer of the Union.

44. On the question of punishment to be meted out to Mr. Ansurkar the Chairman said that he had carefully considered his case and that he felt that the only punishment that was reasonable and adequate was the dismissal of Mr. Ansurkar from service. He pointed out that even as a result of the first inquiry Mr. Ansurkar had been discharged from service by the Chief Engineer. He therefore passed an order on the 12th August 1950 dismissing Mr. Ansurkar from service.

45. The Union alleges that the charge levelled against Mr. Ansurkar was entirely false and that his dismissal was the result of victimisation of a trade union worker. On these allegations it has asked for reinstatement of Mr. Ansurkar.

46. Mr. Kavalekar contended that the Chairman passed the order of dismissal against Mr. Ansurkar without giving him an opportunity of offering his explanation as to the quantum of punishment proposed to be meted out to him and that his findings are based on considerations which are irrelevant and extraneous to

the evidence led in the inquiry. He has also contended that the mind of the Chairman in passing the order of dismissal was influenced by the punishment inflicted on him in the first inquiry. He further urged that the Board of Inquiry did not go into the question of victimization raised by Mr. Ansurkar in his defence.

47. Before I deal with these contentions I shall address myself to the defence taken up by Mr. Ansurkar in his written statement presented to the Board of Inquiry and decide whether any of those contentions are of substance and should prevail. I think there is considerable force in his contention that he was handicapped in the cross-exmination of the witnesses who gave evidence against him in the second inquiry as copies of the evidence adduced in the first inquiry were not supplied to him. The Board's answer to this point that Mr. Ansurkar had the fullest opportunity to cross-examine the witnesses before them and, as the proceedings in the first inquiry were quashed by the Chairman, no cognisance thereof could be taken by the Board or Mr. Ansurkar is neither convincing nor satisfactory. Under the Criminal Procedure Code refusal to supply copies of statements made by witnesses to the police under section 162 has led to the quashing of convictions (*See* King Emperor *V.* Bansidhar, 53 All.458). The right given to an accused to have copies of statements made by witnesses examined against him is a very valuable right and often provides him with material for cross-examination of prosecution witnesses. When such statements are not made available to the accused an inference, which is almost irresistible, arises of prejudice to the accused [*See* Pulukuri Kottaya *V.* King-Emperor, 51 C.W.N. 474 (478), (P.C.)]. Without copies of the previous statements made by witnesses an accused cannot effectively cross-examine them and show that they have perjured themselves or that they have overshot their mark. Under section 145 of the Indian Evidence Act the attention of the witness must be drawn to his statement already reduced to writing before the writing is used to contradict him. Unless the accused has such statements in his hand he cannot be in a position to draw the attention of the witness to the statement already made by him.

48. The credit of a witness can be impeached in the four different ways laid down in section 155 of the Evidence Act. Under section 155(3) the credit of a witness can be impeached by proof of former statements made by a witness which is inconsistent with evidence given by him which is liable to be contradicted. The Board's refusal to supply copies of the statements made by witnesses who gave evidence before them in the earlier inquiry has deprived Mr. Ansurkar of a valuable right which he possessed, namely, of impeaching the credit of those witnesses and showing that they are not reliable. He could have brought out material contradictions in the statements made by the witnesses in the two inquiries. The fact that the proceedings in the first inquiry in which the witnesses gave evidence had been quashed by the Chairman was no excuse to refuse the just request made by Mr. Ansurkar. Merely because the proceedings in the first inquiry had been quashed by the Chairman the witnesses were not at liberty either to improve upon the story told by them in the earlier inquiry or to tell a story which was quite different from the one which they had told earlier. I am therefore of the view that this refusal by the Board to accede to the just request made by Mr. Ansurkar has materially prejudiced him in his defence.

49. The charge against Mr. Ansurkar in the first inquiry was that he distributed anonymous leaflets containing serious allegations against the Port Trust Officials of the Engineering Department *at Merewether Dry Docks and other places.* But it seems that the witnesses adduced by the Port Trust referred only to the distribution of leaflets among the workmen employed in the Port Trust Workshops and not at Merewether Dry Docks. Mr. Ansurkar therefore complained that the first charge in the second inquiry was a new one and it had not been substantiated by evidence led in the first inquiry. The Inquiry Board has stated in its report to the Chairman that workshops were included among "other places" referred to in the chargesheet in the first inquiry and therefore it was open to them to record evidence as to the distribution of leaflets among the employees at the Merewether Dry Docks and the Port Trust's Workshops. But it is important to note that if the evidence brought in the first inquiry referred only to the distribution of leaflets among the employees in the Port Trust's Workshops there was no necessity to retain the charge with regard to the distribution of leaflets among the employees at the Merewether Dry Docks in the second inquiry. The fact that witnesses were brought in the second inquiry to prove that the leaflets had been distributed among the workers employed not only at the Port Trust Workshops but also at the Merewether Dry Docks goes to show that the witnesses improved upon the evidence brought in the first inquiry.

Whether such improvement was consistent with the story as told by the witnesses in the first inquiry could only be known from the statements made by the witnesses in that inquiry. The Port Trust was at perfect liberty to hold a fresh inquiry against Mr. Ansurkar but the Port Trust could not thereby fill up the loopholes remaining in the first inquiry.

50. I do not think that there is any substance in the other contentions raised by Mr. Ansurkar in his written statement presented to the Inquiry Board. The Port Trust had allowed him the assistance of Dr. Shanti Patel in the first inquiry. When he could not remain present at certain stages of the inquiry due to his own engagements the Port Trust did allow Mr. Ansurkar to be represented by another representative of the Union. It was not prepared to give him the assistance of a lawyer in place of Dr. Shanti Patel.

51. Similarly, Mr. Ansurkar's contention that the Inquiry Board was not comprised of any independent person outside the Port Trust is equally untenable. A departmental inquiry against an employee is always held by the employer sitting as a domestic tribunal. All that is necessary for him to assure himself is that the inquiry is fair and impartial. It was not necessary that the Board of Inquiry should have comprised of persons from outside the Port Trust.

52. With regard to the complaint that the Board of Inquiry was both the prosecutor and the judge, it happens that in a departmental inquiry the employer has to play the role of both the prosecutor and the judge. He has to establish the case against the accused employee who is given an opportunity to defend himself and adduce evidence in rebuttal. After drawing his own conclusions therefrom the employer is to award the necessary punishment.

53. I shall now turn to the arguments addressed by Mr. Kavalekar in support of demand No. 2. His contention is that the order of dismissal passed by the Chairman without giving Mr. Ansurkar an opportunity to offer his explanation is void and inoperative. Under Article 311(2) of the Constitution of India no person who holds a Civil post under the Union or a State can be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Article 311(2) corresponds to section 240 sub-sections 2 and 3 of the Government of India Act, 1935. In High Commissioners for India and Pakistan Vs. I. M. Lall P.C. (50 Bombay Law Reporter 649) a case which arose under section 240 of the Government of India Act 1935. Their Lordships of the Privy Council observed that a person charged has the right to a reasonable opportunity being given to him for showing cause against the charge twice before the order of dismissal is passed. They have stated that there are two stages in a proceeding under Article 240 of the Government of India Act, 1935, the first being when charges are inquired into when the person charged should be given a reasonable opportunity to enter into his defence. The second stage is when after the inquiring authority has come to its conclusions on the charges and there arises the question of awarding appropriate punishment to the said person. According to Their Lordships even at the second stage a notice ought to be given to the person charged to show cause against the punishment. The following observations of Their Lordships are pertinent:

> "In their opinion, sub-section (3) of section 240 was not intended to be, and was not, a reproduction of rule 55, which was left unaffected as an administrative rule. Rule 55 is concerned that the Civil servant shall be informed "of the grounds on which it is proposed to take action," and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."
>
> "In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-section (3) makes provisions. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right,

and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry."

It is clear from the above observations of the Lordships of the Privy Council that a civil servant against whom a charge is made in a departmental inquiry is entitled to have an opportunity to show cause at two stages, namely, once after he is found guilty and again when a punishment is proposed on the finding as to his guilt. "Reasonable opportunity" means not only a notification of the action proposed but of the grounds on which the authorities are proposing the action to be taken. The person concerned must then be given a reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken.

54. In this case the Board of Inquiry submitted a report to the Chairman on the 5th August 1950 giving its findings on the charges framed against Mr. Ansurkar. The order of appointment of the Board was only to report the findings and the Chairman was to pass such orders thereon as he thought fit. It was therefore necessary for the Chairman to give notice to Mr. Ansurkar of the punishment proposed to be given by him, namely, dismissal before passing his final order of dismissal but the Chairman did not issue any such notice to Mr. Ansurkar and call upon him to explain why he should not be dismissed from service. In the notice he should have given the grounds on which he proposed to dismiss him. The Privy Council has held that the provisions of section 240(3) of the Government of India Act, 1935 are mandatory. Non-compliance with such a provision renders the order of dismissal void and inoperative.

55. Before the order of dismissal was passed against Mr. Ansurkar he was not allowed to see the report made by the Enquiry Board to the Chairman although he asked for a copy of it. He did not know on what grounds the Enquiry Board had arrived at its findings. He had no opportunity therefore to challenge the correctness of the facts stated in the report nor to challenge the conclusions deduced therefrom by the Enquiry Board. As a result of the first enquiry the Chief Engineer had passed only an order of discharge. Mr. Ansurkar should have been informed of the reasons as to why the Chairman took a different and a very serious view of the whole matter and passed an order of dismissal. He should have been given an opportunity to explain why the view taken by the Chairman was not justified on the facts before him or on the evidence adduced before the Enquiry Board. The Chairman has observed that the finding of the Enquiry Board that Mr. Ansurkar was not guilty on charge 2(a) was unduly generous. He has stated in his order that Mr. Ansurkar had supplied certain information against two Port Trust Employees but in both the cases the information was found to be false after a detailed and searching enquiry was made. Mr. Ansurkar had no opportunity to prove that the information supplied by him against the two Port Trust employees in question was true.

56. I think, therefore, that the procedure followed by the Chairman in passing an order of dismissal against Mr. Ansurkar is illegal and it has vitiated the order passed against him. The following observations of a majority of the Judges of the Federal Court in the case cited above (*Infra*, 50 Bom. L.R. page 649) with which Their Lordships of the Privy Council agreed are pertinent:

"It does however seem to us that the sub-section (3) of Section 240 of the Government of India Act, 1935, requires that as and when an authority is definitely proposing to dismiss or reduce in rank a member of the Civil Service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be a reasonable opportunity, it seems to us that the Section requires not only notification of the action proposed but of the grounds on which the authority is proposing that the action should be taken and that the person concerned must then be given a reasonable time to make his representation against the proposed action and the grounds on which it is proposed to be taken. It is suggested that in some cases it will be sufficient to indicate charges, the evidence on which those charges are put forward and to make it clear that unless the person can on that information show good cause against being dismissed or reduced if all or any of the charges are proved, dismissal or reduction in rank will follow. This may indeed be sufficient in some cases. In our Judgment each case will have to turn on its own facts but the real point of the sub-section is in our Judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the

punishment for certain acts or omissions on his part and he must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed."

In this case the charge-sheet framed against Mr. Ansurkar did not give him any clue as to the punishment that might be meted out to him.

57. The Port Trust has no Standing Orders defining which acts amount to misconduct and which acts of misconduct are liable to be visited with the punishment of dismissal. Mr. Ansurkar did not know that his act would be construed as an act of gross misconduct nor did he know that he would be removed from service for such misconduct. In the absence of Standing Orders it was all the more necessary for the Chairman to inform Mr. Ansurkar what view he took of his conduct and what punishment he proposed to impose on him. The absence of any such indication has to my mind caused great prejudice to Mr. Ansurkar. It was, therefore, absolutely necessary for the Chairman to hear Mr. Ansurkar, before passing the order of dismissal, as to why he should not be removed from service.

58. The Chairman has pointed out in his order that even as a result of th first enquiry held against Mr. Ansurkar, the Chief Engineer had proposed that he should be discharged. That was no ground for consideration while passing the order of dismissal in the second enquiry, because the proceedings in the first enquiry had been set aside on account of the defects which I have referred to already. The only relevant consideration was whether the evidence adduced in the second enquiry did establish the charge framed against Mr. Ansurkar.

59. No doubt the above case of the High Commissioner for India & Pakistan *Vs.* S. Lall was a case decided under the Government of India Act, 1935, whereas Mr. Ansurkar was charge-sheeted and an enquiry was held against him after the new Constitution came into force on January 26, 1950. But the provisions of Article 311 are analogus to the provisions of the Section 240(2) and (3) of the Government of India Act, 1935. It might however be contended that the provisions of Article 311(2) of the Constitution of India govern the relations between the State and its employees whereas, in this case, Mr. Ansurkar, was an employee not of any State Government but of the Port Trust which is a semi-Government body and therefore, the *ratio decidendi* in the decision of Their Lordships of the Privy Council in the abovementioned case of the High Commissioner for India and Pakistan *Vs.* S. Lall are inapplicable to the facts of the present case. But it must be remembered that the provisions of Section 311(2) of the Constitution embody a very salutary principle of natural justice. Maugham J. pointed out in Mackan *Vs.* the Workers Union (1929), I, Chapter 602; that the phrase "the principles of natural justice" could only mean the principles of fairplay, so that a provision for an enquiry necessarily imports the idea that the accused should be given a chance for his defence and explanation. I think it is only just and fair that in a departmental enquiry the person charged should be afforded an opportunity to explain why the punishment proposed should not be inflicted upon him. It was held in the Province of Bombay *Vs.* Madhukar Ganpat, 53 Bom. L.R. 754, that the provisions of the District Police Act regarding the procedure to be observed in a departmental enquiry were based upon the principles of natural justice.

60. I have no doubt, therefore, that although the provisions of Article 311 are not strictly applicable to the proceedings held against. Mr. Ansurkar, the Chairman was bound to comply with the requirements of that section as they embody the broad and fundamental principles of natural justice. The failure on the part of the Chairman to observe these principles and to give Mr. Ansurkar an opportunity to show cause why he should not be dismissed from service has affected the validity of the proceedings held against Mr. Ansurkar. The order passed by the Chairman dismissing Mr. Ansurkar from service is void, inoperative and of no legal consequence.

61. Reliance was placed by Mr. Thacker on behalf of the Port Trust on the ruling of the Bombay High Court in the Province of Bombay *Vs.* Madhukar Ganpat, cited above and it was contended that as there are no rules framed by the Port Trust for conduct of Departmental Proceedings, it was not necessary for the Chairman to call upon Mr. Ansurkar to show cause why he should not be removed from service before passing such order of removal. That was a case of a Departmental enquiry held against a Sub-Inspector of Police by the District Superintendent of Police on whose recommendation the Sub-Inspector was removed from service by the Inspector General of Police. It was held that the order of dismissal of a police officer of a subordinate rank was governed by

Section 243 of the Government of India Act, 1935 and the rules framed under Section 27 of the Bombay District Police Act, 1890. It was found as a fact in that case that the enquiry was not held in accordance with the rules framed under the Bombay District Police Act, 1890 and the delinquent had not been afforded sufficient and adequate opportunity for his defence. It was further held in the said case that these rules themselves embodied the principles of natural justice. An infringement of the rules framed under the District Police Act implied that there was a violation of the principles of natural justice and it was on the ground that those rules had not been complied with, that Their Lordships held that the order of dismissal passed against the Sub-Inspector was void and ineffective.

61A. Now there arises the question as to what relief Mr. Ansurkar is entitled to. If this were a Civil proceeding a mere declaration that the order of dismissal passed by the Chairman was void and inoperative would have served the purpose because by reason of the declaration he would be entitled to be treated as if he still continued in service. But as an Industrial Tribunal I must grant the relief asked for by Mr. Ansurkar. I therefore direct that Mr. Ansurkar should be reinstated within a month from the date on which this award becomes enforceable and he should be granted all the benefits including wages to which he would have been entitled to had he not been dismissed from service. There shall be no break in his service on account of his dismissal.

Demands Nos. 3 and 7

62. The parties were agreed that demands Nos. 3 and 7 may be grouped and discussed together as they arise out of the same grievance made by the Union, namely, the starting of a third shift. The demands are as follows:

(3) "Senior Crane drivers should not be demoted while the junior ones are retained as crane drivers."

(7) "Promotion of nowganis to the posts of crane drivers as in the past."

The Unions' case, so far as it concerns demand 3, is that 31 crane drivers working in the Alexandra Docks were demoted to the posts of mazdoors (labourers) without prior consultation with it, as a result of which, the Conpensatory, House Rent and Dearness Allowance payable to these demoted crane drivers were all reduced, as they were based upon the basic salary payable to them. The reason for such demotion subsequently given by the Port Trust was that there was not enough work for all the crane drivers. The Union contends that assuming that there was not enough work for all the crane drivers the proper course for the Port Trust was to follow the principle 'last in, first out' and effect retrenchment strictly according to the length of service. The Union complains that the Port Trust demoted 31 men who had put in 2 to 8 years of service but they retained in service about 120 men who had put in hardly a year of service. When this was brought to the notice of the Port Trust they advanced the plea that the men working in the first and the second shifts had no connection with those working in the third. But this plea, according to the Union, hardly holds any water, because retrenchment should always be effected according to the principle "last come, first go" irrespective of the shift to which the workmen belong, the shift to which a craneman belongs being always a matter of accident. The Union states that the reason advanced by the Port Trust for demotion is intended to justify an unfair labour practice followed by it, namely, of preferring workmen belonging to the "Company Union" called the National Dock Workers' Union to the workmen who are members of this Union. It states further that after the demotion of the 31 cranemen in question the Port Trust employed fresh recruits who had become members of the Company Union whenever occasions arose for recruiting new crane drivers to the exclusion of the demoted cranemen. After the present reference was made, the Union alleges, the Port Trust promoted temporarily the demoted cranemen but, as this promotion is only temporary, the crane men so promoted are likely to revert to the posts of Mazdoors at any time in future. The Union has therefore made demand No. 3. The Port Trust's reply to the demand is that in June 1949 it became necessary for the Trustees to introduce a third shift as the Union refused to accept the suggestion either to ask the existing crane drivers to work in the third shift or to train the existing nowganis as crane drivers and promote them to work in the third shift as a separate entity.

63. As regard the reduction of the 31 crane drivers the Port Trust's defence is that according to the nature of Port work the demand for cranes fluctuates from time to time and from shift to shift so that in January 1951, 20 cranes less

were required in the first and the second shifts in each of the Hydraulic Establishments than those required in October 1950, while the cranes required for the third shift in both the months remained the same. Although therefore 40 crane drivers became surplus the Port Trust actually reduced 16 crane drivers from the Alexandra Docks and 15 from the Prince's and Victoria Docks on or about the 4th January 1951. But in June 1951 when the demand for cranes increased the 31 persons who had been reverted in January 1951 were again appointed as crane drivers. Whenever the crane load increases temporarily crane drivers have to be appointed to meet the crane requisitions and they are distinctly given to understand that they would have to revert when the workload decreases.

64. Prior to 1947 surplus crane drivers used to be absorbed in maintenance work such as oiling of cranes, making packings for crane glands, and blowing off old packings, chipping, scraping and painting of cranes etc. but, as they refused to do such work in that year, fitters, nowganis, Mazdoors etc. had to be appointed to do that work with the result that when the crane loads fall the crane drivers have to be temporarily reverted to their original posts. This course becomes necessary because the strength of permanent crane drivers is fixed after taking into consideration the average number of crane requisitions. The Union cannot therefore make a grievance of the temporary reversion of 31 crane drivers on 4th January 1951 and their subsequent promotion. The Port Trust denies that it has made any discrimination between members of this Union and any other in the employment of labour.

65. Though Demand No. 3 is stated in general terms the statement of claim put in by the Union makes it clear that it has reference to 31 crane drivers who were demoted on or about the 4th January 1951. The Port Trust started a third shift in June 1949 and treated it as a separate entity independent of the first two shifts. While demoting the 31 cranemen the Port Trust treated the workmen in the third shift as an independent section of labour not interchangeable with or transferable to either of the first two shifts. We have therefore to see how far the Port Trust was justified in treating the third shift as an independent entity and the workmen in that shift as an indepenent section of labour. In order to decide this we have to trace the origin of the third shift and determine under what circumstances that shift was brought into being.

66. I have stated already that even the Chief Labour Commissioner Mr. Jaleshwar Prasad was convinced when he held discussions with the Union in July 1949 that the Crane drivers had adopted "go-slow" tactics as a result of which the turn-round of vessels in the docks was considerably reduced and there was congestion in the Docks. By the middle of June 1949 there were as many as 34 vessels in the stream awaiting berths. The situation became so desperate that the Secretary to the Government of India, Ministry of Transport, had to come down to Bombay to examine the emergent situation that had arisen. In consultation with him the Chairman decided to introduce a third shift working from 12-30 A.M. to 7 A.M. for discharging food grains and in respect of general cargo vessels to extend the hours of work from 12-30 A.M. to 3-30 A.M as was the practice prior to 1st January 1949 and to pay for such work at over-time rates. These facts are borne out by the minute (Ex. A 11/14) dated the 14th June 1949 put up by the Chairman to the Traffic Committee of the Board. The Chairman informed the Committee that negotiations were in progress with this Union and another for working 2 hours on over-time basis in addition to each of the then existing day and night shifts, and if these negotiations proved successful, it would not be necessary to introduce the proposed third shift. The Committee approved of these recommendations and therefore the Chairman carried on negotiations with the two Unions regarding the same.

67. The negotiations carried on by the Chairman with the two Unions for working the third shift for food shifts and for extra over-time work of 3 hours on general cargo vessels ended in failure. The result of these negotiations was communicated by the Chairman to the Secretary, Government of India, Ministry of Transport by a demi-official letter (Ex. A 11/19) dated the 17th June 1949. This letter gives in detail the reasons why the Port Trust was forced to introduce the third shift. It is clear from this letter that the two Unions were prepared to work the third shift only on food ships on certain conditions and neither of them was prepared for over-time on general cargo vessels. The Union with which we are concerned in this reference stated that the crane drivers working in the then existing two shifts would not work in the third shift and insisted upon nowganis in the two existing shifts being promoted as Crane drivers in the third shift. It also insisted on the vacancies arising out of the promotion of nowganis to the posts of Crane drivers or other vacancies being filled up in consultation with it. The other Union also proposed similar conditions and wanted the third

shift to continue for not more than 6 weeks. It was almost impossible for the Port Trust to comply with these conditions. The Chairman therefore stated in his letter to the Secretary to Government that he would introduce the third shift to work on food ships by engaging entirely new men such as crane-men, shore labour and stevedore men. His proposal was accepted both by Government and the Board of Trustees and thus the third shift came into being from the 16th June 1949. By refusing to work over-time in the two shifts the employees concerned committed a breach of an undertaking given by their Union to the Port Trust by a resolution passed by them on 26th November 1944 to work over-time at certain agreed rates (Ex. A 11/6). Started under circumstances described above the third shift continued to be worked entirely with the aid of men newly recruited, a large majority of whom were displaced persons who had worked in the port of Karachi before. As the crane-men working in the first two shifts refused to work in the third shift and, as the conditions proposed by the two unions for participating in the third shift could not be accepted by the Port Trust, the latter had no other alternative than to work the third shift with newly recruited labour. It follows therefore that the Port Trust was justified in treating the third shift as an independent and separate shift having no connection with either of the first two shifts. If so, it follows that the Port Trust could not agree to fill up the vacancies of crane-men and other vacancies occurring in the third shift by promoting men from the first and the second shifts.

68. It was contended on behalf of the Union that it was willing to work the third shift and the Port Trust wrongly rejected the terms offered by it to work the third shift including the promotion of nowganis to work that shift. The Chairman's letter referred to above shows how the terms proposed by the Union were unreasonable and why the Port Trust could not agree to accept those terms. When all the crane-men working in the first two shifts refused to work in the third shift it was useless to have that shift manned by crane-men promoted from the rank of nowganis. Nowganis who had yet to learn the art of crane driving would not be able to show any appreciable out-put. The Chairman has stated in his above mentioned letter that the Chief Engineer was prepared to promote the nowganis and arrange to give them training in the working of the first two shifts, and thus relieve fully trained men for the third shift. But this arrangement was not acceptable to the Union. I cannot therefore accede to the contention that the Port Trust wrongly rejected the offer made by the Union to work the third shift subject to certain reasonable terms.

69. Another contention advanced on behalf of the Union is that while proposing certain conditions to work the third shift it did not close the door for further negotiations and in spite of it the Port Trust introduced the third shift with the aid of refugees without consulting it. An emergency had arisen in the Port of Bombay on account of a large number of ships waiting in the stream for berths. There was no time for prolonged discussion. The Chairman's letter dated the 17th June 1949 shows that he carried on negotiations with the two Unions till the last *i.e.* till the 16th June and it is only after those negotiations failed that he started the third shift.

70. It seems that wiser counsel prevailed with the Union after the third shift was actually started with the aid of refugees. In the course of the settlement brought about by Mr. Jaleshwar Prasad on the 18th July 1949, the crane drivers agreed to do the usual over-time work as before, namely 1½ hours during the day shift and 1 hour in the night shift for maintenance work. But Mr. Jaleshwar Prasad left it to the Port Trust to decide whether the working hours of the day and night shift should be continued. In the course of the discussion which he had with the Union on the several points of difference between it and the Port Trust the Union suggested that the newly recruited 85 crane-men should be discharged but he turned down the proposal. Later on the Union wrote to the Port Trust requesting that the newly recruited crane-men should be discharged as the crane-men in the first two shifts were willing to do over-time work and stated that this was what the Chairman and the Chief Engineer had agreed to (Ex. B 12/6). But the Port Trust replied that the Chairman and the Chief Engineer had not given any such assurance as was referred to in the Union's letter (Ex. B 12/7). The Port Trust did not discharge the newly recruited crane-men but continued to work the third shift with their help. The Union thereafter approached Mr. Jaleshwar Prasad, the Chief Labour Commissioner, with a request to persuade the Port Trust to discharge the newly recruited crane-men. The reply sent by him to the Union (Ex. B 12/8) is very instructive and makes interesting reading. He held the Union responsible for the starting of the third shift. He observed in that letter "You will realise that the Port Trust would be in a very delicate position if they discharge the new crane-men, for, there is always a danger that you may put forth new demands and go slow or go on a strike."

71. It is clear therefore that the Union is responsible for the position brought about for the starting of the third shift. If so, it cannot blame the Port Trust for demoting 31 crane-men from the first and the second shifts when there was no work for them.

72. Now let us see if the contention of the Port Trust that they had to demote 31 crane drivers 16 from the Alexandra Docks and 15 from the Prince's and Victoria Docks as their work load had decreased is borne out by the record. On 6th September 1950 the Deputy Chief Engineer wrote to the Docks Manager pointing out that the number of cranes requisitioned in the months of July and August 1950 in all the docks had fallen. He stated that he would like to reduce the available cranes in the Prince's and Victoria Docks. He again wrote to the Docks Manager on 27th September 1950 saying that the cranes requisitioned in September 1950 had gone down in number and that therefore he proposed to reduce certain number of cranes from the second and third shifts in all the docks with effect from the 1st October 1950 (Ex A 11/23). The statement (Ex. A 12/24) produced by the Port Trust shows that there was considerable reduction in the daily requisitions of cranes from 1st November 1950 to 15th December 1950. The Deputy Engineer sent a list of cranes requisitioned in the month of December 1950 and recommended to the Docks Manager by a letter dated the 29th December 1950 (Ex. A 11/25) that 10 cranes from each of the first two shifts in the Hydraulic Establishments of t Alexandra Dock and the Prince's and Victoria Docks shou'd be reduced and 16 crane drivers from the former and 15 from the latter docks should be retrenched with effect from the 1st January 1951. This proposal was given effect to and 16 crane-men from Alexandra Docks and 15 from the Prince's and Victoria Docks were reverted to their original posts of mazdoors with effect from the 4th January 1951 It is this reversion which is the subject matter of the present demand.

73 The Union contends that there was really no fall in the work load of crane drivers and the fall, if any, was due to defective requisitioning of cranes. This contention is palpably untenable. It is outside the province of the Union to suggest to the Port Trust ways and means how to improve the working of its different departments. It is a matter entirely within the discretion of the Port Trust. The Union cannot find fault with the way in which the Port Trust was requisitioning cranes. It does not attribute any ulterior motive to the Port Trust and contend that it purposely brought about a fall in the number of cranes requisitioned in the latter half of the year 1950. The evidence adduced in this case leaves no room for doubt that the demotion of the 31 crane drivers was necessitated by a fall in the work load of cranes.

74. There is no dispute that at the time of demotion of the 31 crane drivers the crane drivers were doing purely the duty of driving cranes They refused in 1947 to do the maintenance work which they used to do before. By a letter dated the 4th November 1947 the Port Trust had warned the Union of the consequences of refusing to do maintenance work saying that if the crane drivers refused to continue to do maintenance work the surplus crane drivers would have to be retrenched. In spite of this warning the Union insisted on not-continuing to do maintenance work with the result that whenever the demand for cranes decreased surplus crane drivers had to be retrenched or demoted. When therefore there was a fall in the number of cranes requisitioned in the latter half of 1950 the surplus crane drivers could not be detailed for maintenance work. Perforce they had to be demoted. The Union cannot make a grievance of it now. That the reversion of 31 crane drivers was only temporary and brought about by the exigencies of port work is clear from the fact that those reverted crane-men were again promoted as crane-men in June 1951 when there was an increase in the number of ships calling at the port. The shows the *bona fides* of the Port Trust Authorities. In October 1951 when there was a fall in the number of cranes required the Port Trust reverted 18 crane-men to their original posts. These required crane-men filed a complaint before the Central Government's Industrial Tribunal at Dhanbad under Section 33-A of the Industrial Disputes' Act But that complaint was dismissed (Ex. A 11/26).

75. The Union's grievance is that, while demoting the 31 crane drivers, the Port Trust demoted senior crane drivers instead of the juniors. In this connection it is necessary to remember that 20 per cent. of the posts in the first and the second shifts had been reserved for displaced persons by a resolution of the Trustees passed on the 14th February 1950. The Port Trust followed the principle of "last come, first go" in respect of promotions as well as demotions of the remaining 80 per cent. of the vacancies in the first two shifts, treating the third shift as an independent shift having no connection with the first two. It filled up the vacancies in the third shift by employing outsiders. The Unions' contention that senior crane drivers were reverted while the junior ones were retained in service

does not therefore hold water. The Port Trust maintained that the reversion of the 31 crane drivers in question was strictly in accordance with juniority in service if the third shift is treated as a separate and independent shift and 20 per cent. of the vacancies in the first two shifts is reserved for displaced persons. The Union has not called any evidence to prove that it is not so. I cannot therefore accede to demand No. 3 made by the Union.

76. The Union's demand is that Nowganis whose claims to the posts of crane drivers were superseded by the Port Trust by recruiting outsiders since June 1, 1949, should be immediately promoted to the posts of crane drivers and they should be paid compensation equal to the amount which they lost in their wages as a result of their supersession. It states that the Port Trust Authorities started the third shift in June 1949 and recruited outsiders as crane drivers to work that shift on the plea that the then existing crane drivers were not willing to work that shift. The authorities did not give sufficient time to the Union officials to persuade the crane drivers to work the third shift and in spite of the age long practice of promoting the Nowganis to work as crane drivers and in violation of an agreement entered into with the Union it appointed outsiders as crane drivers. The Union apprehended that, although, the Port Trust authorities started the third shift as a temporary measure it would become permanent. The Unions apprehension, it is alleged, has come true. The reason assigned by the Port Trust to appoint displaced persons—a reason which was subsequently invented by them, was that the Government of India had passed orders that a sufficient number of such persons should be employed in Government and semi Government institutions. But there was absolutely no justification for appointing almost all the crane drivers in the third shift from the displaced persons. The only consideration which weighed with them in doing so was that these displaced persons were members of a Company Union known as the National Dock Workers' Union and the Port Trust authorities wanted to favour them and bolster up their claims. Even the vacancies which occurred in the third shift after it was started were filled up by appointing displaced persons. Besides, while filling up the vacancies of crane drivers the Port Trust authorities ignored the claims of those who had already worked as crane drivers but had been temporarily demoted. The authorities also ignored the well recognised principle that the new employees should be appointed to the lower posts and then promoted to higher posts.

77. The Port Trust resists the demand alleging that the promotion of Nowganis and Mazdoors to the posts of crane drivers is limited to the extent of 80 per cent. of the vacancies arising in the first two shifts and the appointment of crane drivers in the third shift is directly made, from outsiders for the reasons already stated. The demand as framed by the Union had been put up before the Chief Labour Commissioner but he had turned it down on the ground that he was not prepared to recommend the discharge of refugees enrolled as crane-men. The Port Trust has denied all the other allegations made by the Union and contended that it had to start the third shift and appoint outsiders to man it as the men employed in the first two shifts refused to work overtime and the crane-men employed in those shifts refused to work in the third shift.

78. I have already referred to the circumstances which led to the introduction of the third shift and expressed the view that the Port Trust had no other alternative than to start it with the aid of outside labour. I have stated that the Union's offer that the entire third shift should be manned by Nowganis promoted as crane drivers was unreasonable, for in that case the third shift would have become inefficient and ineffective. The Port Trust was willing to work the third shift by promoting Nowganis as crane drivers after giving them the necessary training in the first two shifts but the Union was in no mood to accept that offer. I cannot therefore entertain the Union's prayer that the Nowganis who were not promoted as crane drivers should be immediately promoted as such and they should be paid crane driver's wages with retrospective effect from June 1949 when the third shift was introduced. The Port Trust has been filling up the vacancies of crane drivers in the first two shifts by promoting the Nowganis working in those shifts, but not to the posts of crane drivers in the third shift. The result of promoting the Nowganis who have not been appointed as crane drivers to work the third shift would result in the discharge of the crane drivers who entered Port Trust service in June 1949 and thereafter. That would be very unfair and unjust to such crane drivers because they have loyally served the Port Trust, in their hour of need and stood by them when a state of emergency prevailed. Realising this Mr. Jaleshwar Prasad, the Chief Labour Commissioner (Central) turned down the present demand of the Union when it was made to him. In rejecting the Union's demand he observed: "Promotion of Nowganies—The demand is that promotion to crane-men should be from the grade of Nowganies as this was the previous practice. It appears that Port Trust have recruited 85 new crane-men who were not

in service before. The reply of the Port Trust is that in view of the fact that the crane-men refused to do over-time work, even cleaning and oiling cranes, they had no alternative but to recruit the new men to do the work. As the congestion of the food ships had increased they wanted to work third shift for which they had to recruit fresh men as the old men refused to work the third shift. Moreover, the policy of the Government of India is to employ as many of the refugees as possible and these crane-men are mostly refugees. Therefore in spite of the fact that the Nowganies should ordinarily be promoted to the ranks of crane-men, the action of the Port Trust in recruiting new men from the refugees appears to be justified. Now it is for the Port Trust to see how they utilise the services of new recruited men. It will be difficult for me to recommend that the refugees who have been enrolled as crane-men, should be discharged."

79. It will be unfair and unjust to direct that the crane drivers so far appointed in the third shift should be discharged to make place for nowganis whom the Union wants to be promoted to those posts. I therefore reject that part of the demand.

80. The demand "Promotion of Nowganies to the posts of crane drivers as in the past" is couched in general words also refers to the promotion of Nowganis to the posts of crane drivers falling vacant hereafter. Whatever might have been the circumstances under which the third shift was started and whatever might have been the reason for which it was treated as a separate shift independent of the first two, there is no longer any justification, in my opinion, to treat it as such hereafter. It was started as a temporary measure to meet an unforeseen situation. Such a situation no longer exists. It was intended mainly to relieve the congestion of ships carrying food grain. The congestion was cleared soon after the third shift was started. It is nearly 4 years now since it was brought into operation. There is neither any necessity nor any justification to continue it as a temporary shift. There is also no reason why it should be treated as a shift independent of the first two. I have referred at length to the demand for decasualisation of port labour throughout the world and the opinion expressed on that question by the Royal Commission on Labur and the Office of the International Labour Organisation in my award in Reference (IT-CG) No. 1 of 1952. Casual labour in ports has been decried by all social reformers who have the welfare of the labour at heart. The employees of the first two shifts have been sufficiently punished for their refusal to work the third shift on terms which were impossible to accept. Not only fresh and outside labour was employed to work the third shift but even promotions of the employees in the first two shifts were limited to those two shifts and they were not promoted to the vacancies in the third shift. Refugees were appointed not only to man the third shift, but a certain percentage of the vacancies in the first two shifts was reserved for them. When the third shift was manned almost entirely by refugees there was no necessity to reserve 20 per cent. of the vacancies in the first two shifts for them The Port Trust transferred some refugees from the third shift to the second shift on the plea that those vacancies had been reserved for refugees. Treating the third shift as an independent shift the Port Trust refused to fill up vacancies in that shift by promoting employees in the first two shifts. They also refused to discharge the persons employed in the third shift to make place for those promoted from the first two. All this has entailed sufficient punishment on the employees in the first two shifts for the unreasonable attitude they assumed at the time of a national calamity in June 1949 and for holding the Port Trust to ransom as stated by the Chairman. But for that reason the Port Trust cannot and should not punish the misguided employees of the first two shifts for all time to come. It should not seek to perpetuate the evils of casual labour on the ground of convenience and expediency. The third shift might have been a potent or a convenient weapon in the hands of the Port Trust to bring down the Union to its knees. But what was good for an occasion cannot be good for all time. If the crane-men indulge in "go-slow" or any such tactics hereafter the Port Trust can bring them to book by taking disciplinary action against them. To continue the third shift as a temporary shift and to treat it as an independent shift even hereafter is a remedy which is worse than the disease. An evil is an evil for all time. The evil of casual labour will still be there for whatever reason it is continued as such. It is now four years since the third shift was started and it has come to stay. The benefits which accrue to permanent employees such as Provident Fund, Gratuity, Allowance and leave facilities are denied to the employees in the third shift. They do not get the benefit of the Incentive Bonus to which the permanent employees are entitled. It is improper and unjust to treat the employees in the third shift as temporary and casual labour and to continue it as an independent shift. The third shift will have hereafter to be treated as on the same footing as the first two shifts and the employees in that shift as on par with those in the first two.

81. It was urged on behalf of the Port Trust that Nowganis are inexperienced in driving cranes and efficiency will be lost if they be promoted as crane drivers. But the Port Trust has not denied that prior to the starting of the third shift Nowganis used to be promoted as crane drivers and even now the Nowganis in the first two shifts are promoted as cranemen in those shifts. The Chief Labour Commissioner Mr. Jaleshwar Prasad came to the conclusion that it was the general practice of the Port Trust to promote Nowganis to the posts of crane drivers. Before refugee crane drivers from Karachi became available for direct recruitment it was from the Nowganis that the crane drivers used to be appointed because it is these Nowganis who gain some experience in the handling of cranes. The promotion of course will be according to certain well recognised principles.

82. The next point urged by Mr. Thacker on behalf of the Port Trust is that in case all the three shifts are integrated the cranemen in the three shifts will have to be rotated so that the cranemen in the first two shifts will have to work in the third shift and *vice versa* every fortnight. He argued that the crane-men transferred to the third shift from the first two shifts will be naturally inclined to adopt "go-slow" tactics as there is no incentive bonus for the employees of the third shift and no speed money is paid to the crane drivers in the third shift. This fear will be unfounded if the labour in the third shift is decasualised and the labourers employed in that shift are treated as on par with those employed in the first two shifts. Besides, a large majority of refugee labourers employed in the third shift will be equally distributed in all the three shifts and therefore the cranemen employed in the first two shifts will not be in a position to dictate their own terms.

83. It was further contended that the cranemen working in the third shift do the maintenance work referred to above, whereas the cranemen in the first two shifts do not do that work so that there will be dislocation of work if the crane men transferred to the third shift refuse to do maintenance work. If the cranemen working in the different shifts refuse to do maintenance work they will be cutting under their own feet for, in that case, they will not only be losing over-time work but some of them may have to be retrenched if there be not sufficient work for all of them.

84. The last point urged on behalf of the Port Trust is that the crane drivers in the third shift, at least some of them, are not members of the Union at whose instance the present reference was made and this award which will adversely affect them should not be made behind their back. This award, instead of adversely affecting the crane-drivers in the third shift, confers a benefit on them by treating it as a regular shift and by treating the cranemen employed in that shift as on par with those employed in the first two shifts. Besides, the demand (No. 7) as framed is concerned with the cranemen employed in the third shift also because it states that Nowganis should be promoted as crane drivers irrespective of the shift in which they work. The Nowganis are even now promoted as crane drivers in the first two shifts and therefore the demand must be deemed to pertain to promotion of Nowganis to the posts of cranemen in the third shift. Although the demand refers to cranemen in the third shift and, although notice of this reference was issued to all concerned, none has appeared and said anything about the present demand. I do not therefore see any force in the above contention of the Port Trust.

85. I therefore direct that Nowganis should, with effect from the date on which this award comes into operation, be promoted to the posts of crane drivers irrespective of the shift in which the vacancies of crane drivers occur The existing vacancies shall be filled up by such promotion. The promotion shall be based upon seniority, fitness and confidential record of the person concerned.

Demand No. 4

"RETRENCHMENT AND RETRENCHMENT BENEFITS"

86. From the statement of claim put in by the Union it is clear that its first and foremost contention in the matter of retrenchment is that there was no scope for retrenchment and that the retrenchment effected by the Port Trust was neither necessary nor justified. It refutes the Port Trust's allegation that there was decrease in the quantum of work and that necessitated the reduction of workmen from the Workshops and General Works. The Port Trust has stoutly denied the contention that there was neither any necessity nor any justification for retrenchment. It states that since the last war there has been an inordinate increase in the Port Trust's expenditure on staff and therefore the Port Trust found it necessary to do away with the surplus staff.

87. It will be relevant in this connection to refer to certain observation of Mr. Sankara Aiyar on the labour strength in the Port Trust. He has observed as follows:

> "The workshop labour force is now 2,190 men, as compared with the pre-war figure of about 1,100 men. No figures are available to enable me to make a comparison of the relative outturn of the two periods, but the number of work orders dealt with has increased from 3,051 in 1936-39 to 3,938 in 1948-49, which represents a 29 per cent. increase and, as compared to this, the increase of nearly 50 per cent. in the labour strength appears to be decidedly excessive, and idle time is conspicuously in evidence in the yard and even in some of the shops The Blacksmith shop is probably the only shop which seems fully engaged. It is understood that most of the staff recruited during the year for night shift work to cope with the increased work during war-time, has subsequently been absorbed in the general cadre even after war, and with it the night shift came to an end. An inspection of the workshop at work does undeniably give one the impression that the labour employed is not fully engaged and is far from producing fully the outturn normally to be expected of them. I was told in my discussions of the situation with the Chief Foreman and others that the impression I gathered was correct and that the reason for such a situation was that the existing conditions of labour and the authority vested in officials in immediate charge of the shops do not permit of as much wholesome control and discipline being exercised as is necessary to produce full normal outturn, not to speak of maximum. It seems to me that considerable economy and efficiency can be achieved by invoking the expert assistance of a job-analysing company like the Eastern Bedaux Ltd., who can easily determine the minimum nucleus labour strength required for the workshop and the basis on which necessary additions and reductions should be made for subsequent fluctuations in outturn."

88. In this reference we are concerned with the retrenchment effected by the Port Trust in its Workshops and General Works. In the General Works there are two divisions, namely, the Southern Division and the Northern Division. The Workshops of the Port Trust are one of the biggest single units of the Engineering Department. In the year 1949-50 it employed 2119 workmen of all categories: skilled, semi skilled and unskilled. The Workshops are mainly engaged on repairs and maintenance service and it does manufacturing work also to a limited extent. The Workshops have nothing to do with the handling of cargo in the Port. On the other hand, they have to undertake special type of work such as lock-gate and caissons work. The work of lock-gate and caissons is not a continuous type of work. It has got to be done at intervals of 5/10 years. Mr. Thacker stated in the course of his arguments that this type of work was done in 1938, 1942, 1948, 1950, etc. It was stated that this type of work is done by employing temporary labour as the work is to be done expeditiously. Besides, during the war the Port Trust had to undertake work connected with the navy and defence services. For this purpose they had to employ a fairly good number of labourers. Mr. Thacker stated that after the termination of the war the Port Trust had to continue the large labour force it employed during the war because it had to carry on maintenance work which was in arrears, for the same plant had to do this type of work. It was further pointed out by Mr. Thacker that there was an explosion in the Docks on the 14th April 1944 which caused considerable damage to the Port Trust properties. The Port Trust could not carry on the repairs to the damaged property as building materials were not freely available during the war. After the cessation of war the work that had remained in arrears was carried out and it was found at the beginning of 1950 that there was considerable surplus labour force in the Workshops. In 1938 the strength of the labourers in the Workshops was 638 but it rose to 2100 in 1947. This will show that there was more than sufficient labour force in the Workshops in 1947. The Port Trust therefore retrenched some of the workmen from the Workshops in 1950 A committee consisting of the Mechanical Superintendent and the Senior Assistant Mechanical Superintendent (Shore Plant) was appointed on the 9th April 1951. They carried on extensive labour analysis shop by shop and came to the conclusion that the requirements of labour at the time of their report were only 965, whereas their actual strength at that time was much more than 965.

89 Now with regard to the retrenchment in the General Works the Port Trust states that even in that section there was a disproportionate increase in the number of workmen since the war. The pre-war strength in that section was 1633, whereas the strength of workmen in the said section before retrenchment was

3117. That supports the allegation made by the Port Trust that there was enormous increase in the labour force of the General Works after the war. The General Works had to carry out repairs to the Port Trust buildings and do minor construction works. During the war they had to build military sheds in the Docks and carry out repairs to those sheds. They had also to provide additional water supply facilities to ships which touched the Port during the war. The General Works had also to carry out repairs to transit sheds, dock walls and bridges on account of the damage caused by the explosion of 1944. Mr. Thackar stated that the above work had accumulated since the war, but by the end of 1949 the arrears of work having been cleared, the Port Trust felt the necessity of retrenching its labour force in the General Works. In the Northern division of the General Works there was a stone quarry at Mahul Known as the Anik Quarry. This quarry was found to be working at considerable loss and, therefore, it was thought necessary to effect retrenchment of the labourers employed on it. On 16th April 1950, 80 persons working on the quarry were retrenched and on 1st July 1952 permission was obtained from the Central Government Industrial Tribunal at Dhanbad to retrench 33 workers.

90. In the General Works, Northern Division, 63 men were retrenched on 1st September 1950. Prior to this retrenchment the Port Trust had asphalt roads which required maintenance and repairs. But it was decided to convert these roads into concrete roads to save expenses on maintenance and repairs. The construction of concrete roads was therefore taken on hand in 1947 and completed in June or July 1950. A partial retrenchement in the whole section therefore became in evitable. A second batch of workers was therefore retrenshed on 1st October 1950. Some more workmen were retrenched in 1951 and some in 1952.

91. In the Southern Division the strength of labourers prior to retrenchment was 1953. But the strength of labour in that division prior to war was only 979 and for the same reasons as those given above for retrenchment in the Northern Division the Port Trust found it necessary to effect retrenchment in the Southern Division also They therefore reduced a batch of workers on 1st October, 1951 and another batch on 1st March 1951. Some more men were retrenched thereafter in year 1951.

92. It was urged on behalf of the Union that the main reason why there was reduction in the quantum of work from the beginning of 1950 was that the Port Trust began to employ contract labour when in fact it ought to have employed its own labour. Mr. Kavalekar criticised at length the system of engaging contract labour when the same work could be done by the Port Trust employees. He relied on the views of the Royal Commission on Labour as also the Central Pay Commission on contract labour. The Royal Commission on Labour remarked:

> "We have found it to be generally true that workmen employed by salaried managers, who are personally responsible for their workers, receive more consideration than those employed by contractors.... We believe that, whatever the merits of the system in primitive times, it is now desirable, if the management is to discharge completely the complex responsibility laid upon it by the law and by equity, that the manager should have full control over the selection, hours of work and payment of the workers." (Report, page 119).

The Central Pay Commission made the following observations on the employment of contract labour:

> "A strong objection was raised to any system of contract labour It was insisted that work of every kind for which contractors' labour was at present engaged should be got done by departmental labour. We are not able to make any such sweeping prohibition. As it frequently happens that labour does not get a fair deal from contractors, it will be consistent with the spirit of our recommendations if contract labour is avoided as far as possible." (Report, page 194-195).

The Bihar Labour Enquiry Committee condemned the system of recruitment of labour through contractors, who, according to the Committee, "Ordinarily lack the sense of moral obligation towards labour which the employers or their managers are expected to have, and, therefore, do not often hesitate to exploit the helpless position of labour in their charge." The Bombay Textile Labour Enquiry Committee agreed with this view. The Labour Investigation Committee of the Government of India, endorsed the view of the Bombay and Bihar Committee. (Report, page 84). It is clear from these authorities that contract labour should be avoided as far as possible in the interests of social and moral welfare of the workers.

93. Mr. Thacker stated in the course of his argument that the Port Trust did not employ contract labour in any section of the Workshops or any other shops when retrenchment was carried out except in the case of repairs to a barge. As the Port Trust had no slipway they had no other go than to entrust the repairs of the barge (No. 136) to the Mazagaon Docks. Mr. Thacker further stated that since the inception of the Port Trust, it had entrusted the work of chipping and painting the vessels to contractors and that was also done before and after the retrenchment. In the General Works, it was stated, no contract was given for carrying out any maintenance work either before or after the retrenchment but it was admitted on behalf of the Port Trust that contract has been given from a very long time for large construction work such as the building of huge transit sheds, residential quarters for staff and officers, etc. It was further admitted that some repair work was got done departmentally during the war and shortly thereafter on account of force of circumstances.

94. It is clear from the authorities cited above that employment of contract labour is not totally prohibited. On this point I have already referred to the views of the Central Pay Commission. The Labour Investigations Committee, Government of India, has pointed out that some sort of distinction between essential and non-essential processes will have to be drawn in the matter of employment of contract labour; for example, if a textile mill owner calls a building contractor for painting or white-washing which are not part of the essential processes in the mill, then there can be no objection. What is prohibited is the employment of contract labour to carry on the essential work which the concern carries on. Loading and unloading of cargo is the principal work carried on by the Port Trust. It cannot be expected to carry on building construction work or such other work without engaging contract labour. The Port Trust cannot, therefore, be found fault with for having engaged contract labour for purposes referred to above.

95. The next contention raised by the Union in regard to retrenchment is that the principles followed by the Port Trust in the matter of retrenchment were not healthy but were open to serious objections. It first weeded out non-nationals of India. The question as to who should be employed in India is a matter of principle which the Government of India has to decide having regard to the interests of the nation as a whole. When Government lays down a particular policy in the matter of employment a semi-government body like the Port Trust is bound to follow it. The Port Trust cannot be accused of having chalked out a policy for itself which cannot be supported on principle. In pursuing the policy of employing only the nationals of India the Port Trust only fell in line with the policy laid down by the Government of India.

96. The second principle observed by the Port Trust is the matter of retrenchment was to discharge inefficient employees. The Union has taken serious exception to this. The general rule to be followed in the matter of retrenchment it is well known, is "last in, first out". The Labour Appellate Tribunal observed as follows, while laying down the principle to be followed in the matter of retrenchment, in the case of Indian Navigation and Industrials Ltd., Alleppey and certain workmen (1952, Labour Law Journal, Vol. II, p. 611 at p. 612):

> "The principle to be followed in retrenching is not in doubt. It is a case of 'last come, first go'. There are, of course, exceptions to this rule. For instance, in the course of retrenchment an employer may weed out the inefficient and the unreliable, but such powers are to be sparingly exercised and will always be open to the closest scrutiny, and it will be permissible, only when there is a history of past misdemeanour or misconduct, punished, tolerated or condoned. We advisedly use the words 'history of misdemeanour or misconduct', because individual acts are dealt with by the management in the normal way."

These are the principles which should have guided the Port Trust in the matter of retrenchment.

97. The third principle which the Port Trust followed in the matter of retrenchment was juniority according to the length of service of the staff proposed to be retrenched. But they made three exceptions to this rule, namely, (i) the displaced persons recruited after 15th August 1947, (ii) those employees who had been on duty for a period of more than 15 days during the general strike of 1947-48 and (iii) those who had specialised in particular kind of work such as boat building, etc. As stated above, the principle of juniority is the general principle to be followed in the matter of retrenchment. Of course, the Port Trust could have made an exception in the case of displaced persons because

the Government of India had directed, as a matter of policy, that a certain percentage of vacancies under it should be reserved for displaced persons. The Port Trust therefore had by a resolution decided to reserve 20 per cent of its vacancies for displaced persons. The Union cannot object to the exception made by the Port Trust in the matter of displaced persons. But I think its objection that it was wrong in principle to give preference to those of its employees who had been on duty for period of more than 15 days during the strike in 1947-48 deserves to be upheld. The Port Trust's action in singling out those persons who had not taken part in the strike and retaining them in service is bound to lead to discontent, heart-burning and social injustice. Strike is a potent weapon which the labour has acquired after years of keen and hard struggle. It is true that it is not open to them to employ this weapon in an illegal manner, but if a management finds that its employees have resorted to an illegal or an unjustified strike it is open to them to hold an inquiry against those who had taken part in such strike and take the necessary disciplinary action against them. But it would be bad policy to retrench those of the workmen who had taken part in the strike and to retain those who had not done so. It also savours of favouritism.

98. Now coming to the third exception made by the Port Trust in the case of those workmen who had specialised in particular kind of work such as boat building, it must be observed that retrenchment is generally departmentwise. If in a particular department there is no more than one workmen who is specialised in a particular kind of work the management can make an exception in his case and retain him in service, though junior, in preference to other workmen in the same department who are senior to him. But if there is more than one workman in the same department who has specialised in a particular kind of work the general rule that the "last come, first go" should be applied.

99. A further objection raised by the Union to the method of retrenchment is that while adopting the principle of "last come, first go" the Port Trust took into consideration the period of service put in by a workman in his department or section and not the total period of his service as a Port Trust employee, whatever might have been the departments in which he worked. I am afraid I cannot uphold this objection in the form in which it is put by the Union. A concern may have different departments or sections and there may be unskilled, semi-skilled and skilled workmen in each one of such departments or sections. While effecting retrenchment the management must reduce the juniormost in the particular category in which they want to effect retrenchment. While doing so they have to take into consideration the length of service put in by the worker in his particular category. For instance, if the management wants to effect retrenchment of some fitters who are surplus to their needs they have to retrench such of them who are the juniormost in that category according to their length of service. The period of service put in by the particular worker before he was promoted as a fitter cannot be taken into consideration for purposes of effecting retrenchment from among the category of fitters. But before throwing a fitter out of employment on account of retrenchment the management must decide whether he could be employed in any other category in which he could fit in, having regard to his total period of service. If a fitter is prepared to work as a mazdoor, he must be employed as a mazdoor after retrenching a mazdoor who is juniormost in his category and who has put in a lesser period of service than he.

100. The Union has made a grievance alleging that the Port Trust transferred some workmen from one department to another, considered them junior in the department to which they were transferred, and retrenched them while effecting retrenchment in that department. The question of transfer from one department to another is in the discretion of the management and there cannot be any directions or prohibition in that matter. But such a transfer cannot be effected with the ulterior motive of doing away with the services of some other workmen in the said department. If the transfer is *bona fide* the length of service put in by him in that department in his category will have to be taken into consideration and he will have to be offered alternative employment in his original department or, if he is willing, employment in other occupations.

101. The Union has complained that the Port Trust did not consult it before effecting "block retrenchment". It is true that the Port Trust had stated in a letter addressed to the Union on 18th May 1946 (Ex. B-13/2) that the Chairman had no objection to giving the Union an opportunity of making representations in cases in which large sections of employees were to be retrenched provided that the final decision would rest with the Trustees or the Chairman, as the case may be. I do not think that the Union could insist upon the Chairman consulting them on each and every occasion before effecting large scale retrenchments. That is a matter within the discretion of the management and the Union can have

no voice in it. If, however, the retrenchment is unjustified or unnecessary it is open to the Union to make the necessary representation to the management and, if it is not satisfied with the response it receives from them, it could take the matter to its logical consequence. If the retrenchment is *bona fide* the management is the sole judge of the extent of retrenchment (see the Presidency Jute Mills Co. and the Presidency Jute Mill Company's Employees' Association—1952 Labour Law Journal Vol. 1, p. 796). Mr. P. S. Bakhle in his award in Firestone Tyre and Rubber Co. of India *vs.* the workmen (office staff) employed under it [1950 I.C.R. (Bom.) p. 481] held that the question whether retrenchment was necessary or not was one of internal management and the Union could not claim any right of being consulted in that matter. Sometimes prior consultation with the Union may lead to dire consequences and retrenchment might become ineffective on account of the delay caused in the discussion and consultation. I cannot therefore countenance the contention of the Union in this behalf.

102. I have so far dealt with the scope and the necessity for retrenchment carried on by the Port Trust. Demand No. 4 as formulated by the Union is too general and vague. From the statement of claim put in by the Union it appears that it wants me to lay down the principles of retrenchment which the Port Trust should follow. It has referred to the retrenchment carried on by the Port Trust and complained that it was wrong both in precept and in practice. I have discussed at length the various objections raised by the Union against retrenchment and laid down what, in my view, should be the correct and appropriate principles in such matter.

103. I shall now address myself to the benefits of retrenchment claimed by the Union in its demand. The Union prays that all those workmen who were retrenched since the 1st January 1950 should be reinstated without any break in their service or loss of service benefits. If this Tribunal comes to the conclusion that the retrenchment was inevitable the Union states that the cases of all workmen who were retrenched from the aforesaid date should be individually reconsidered and those of them who were wrongly or improperly retrenched should be ordered to be reinstated. I am afraid that the relief of reinstatement claimed by the Union is beyond the purview of the order of reference made to me by Government. Demand No. 4, as stated in the schedule annexed to the order of reference reads: "Retrenchment and retrenchment benefits". Reinstatement is not a *benefit* flowing or accruing from retrenchment. It is a right to which a wrongly discharged or retrenched person is entitled and so far as a particular management is concerned it is a liability which could be thrown upon it in arbitration proceedings. Reinstatement is a relief which a workman is entitled to ask challenging the validity or propriety of the order of retrenchment. It is a relief open to a wrongly discharged workman.

104. The relief of reinstatement in this case, it seems, was claimed by the Union as the result of an afterthought. In its letter (Ex. B-9/5) dated the 12th February 1951 addressed by the Union to the Regional Labour Commissioner (Central), that is, the Conciliator, it had made six demands and one of them, namely, demand No. V, related to "unjustifiable retrenchment". After raising several objections against the manner in which retrenchment was effected by the Port Trust the Union stated that it demanded "payment of unemployment compensation to the retrenched employees". There is nothing in this letter to show that the Union demanded reinstatement of the workers who were improperly or wrongly retrenched. It is on this letter that the conciliator took action and finally made his report to Government. The demand for reinstatement was not before Government. Unless Government has had opportunity to consider that aspect of the question it cannot be said that the present reference relates to that question. If the Union has not agitated the question of reinstatement before the Conciliator and, if there is nothing in the order of reference made by Government to indicate that they applied their mind to the question and if further the order itself cannot be construed in any way as referring to the question of reinstatement, it goes without saying that it does not lie in my province to grant that relief.

105. Mr. Kavalekar relied upon annexure "A" (Ex. B-9/10) to the Union's letter (Ex B-9/5) dated the 12th February 1951 and also to two letters (Ex. B-13/19) dated the 25th July 1950 and (Ex. B-13/42) dated the 14th March 1951 addressed by the Union to the Port Trust and stated that these documents prove that the Union's demand with regard to reinstatement was before the Conciliator and he referred to it in his report to Government. Annexure "A" refers to a resolution passed by the Managing Committee of the Union on the 22nd January 1951. The resolution demanded that the senior workers retrenched by the Port Trust should be reinstated with adequate compensation. But that was not made a demand by the Union in its letter addressed to the Conciliator wherein the Union sought the relief of only unemployment compensation. The Report (Ex

B-9/15) made by the Conciliator to Government clearly indicates that the Union did not press any claim with regard to reinstatement before him and that the only relief it sought was unemployment compensation.

106. There is nothing in the two other letters referred to above to support the contention now made by Mr. Kavalekar On the other hand, by its letter (Ex. B-13/19) the Union demanded reemployment of the retrenched workers and compensation to those who could not be so reemployed. There is no substance, therefore, in the argument now urged by Mr Kavalekar with regard to reinstatement.

107. Now let us see whether any unemployment benefit should be granted to the retrenched personnel. The Union did not submit a list of retrenched workmen with the letter which it wrote to the Conciliator referring the dispute between it and the Port Trust for conciliation The Union should have given in the list the names of retrenched workmen, the dates of retrenchment, the period of their service and the period for which they remained unemployed. In the absence of such a list it cannot be taken that the Conciliator had any idea as to who are the retrenched workmen for whom the Union claimed compensation As no such list was produced before the Conciliator, naturally he must not have supplied any list of retrenched workmen to Government. Government, therefore, had no opportunity to consider individual cases of retrenched workmen Even when the Union put in its statement of claim before me it did not produce a list giving the necessary information as to the names of retrenched workmen, the dates of retrenchment, etc. It was only after Mr Thacker finished his arguments and Mr. Kavalekar rose to reply to them that the Union produced a list (Ex. B-17) giving the serial numbers of the workmen from Ex B-1 when I stated that it had not produced a list of the workmen for whom it had claimed retrenchment benefits. The list (Ex B-17) purports to be that of the retrenched workmen who were senior in service Mr. Thacker stated in the course of his argument that a large number of the retrenched workmen have been reemployed by the Port Trust. Some of them were reemployed shortly after retrenchment and some after a length of time Some of those who had been reemployed had to be retrenched again. There is no evidence as to who are the workmen who remained unemployed at the time of this reference or at the date of the hearing of this dispute. In the absence of any such evidence I am not in a position to pass orders granting compensation as a retrenchment relief. In the case of General Motors Ltd. and its workmen (1951 Labour Law Journal Vol. II p. 495) where more than 1100 workmen had been retrenched from time to time the demand for unemployment benefit was made without mentioning the names of retrenched workmen, the dates of retrenchement, the period of their service and the period for which they remained unemployed The Labour Appellate Tribunal held that such a vague claim in abstract could not possibly be entertained. The Union has stated in this case that the Port Trust retrenched about 1000 workmen. It is impossible for me to grant unemployment benefit unless the particulars referred to in the authority cited above are given and there is evidence to show who are the workmen who have remained unemployed The Port Trust had no opportunity to know the names of workmen for whom compensation is claimed and to give its say in that matter. I, therefore, reject the second part of the demand.

Demand No 5

"Deduction of wages for the stoppage of work for 30 minutes on the 3rd July 1950 as a mark of respect to Shri Yusuf Meherally"

108. Mr Yusuf Meherally, the well known labour leader and social worker of Bombay died on the 2nd July 1950. On 3rd July 1950 the Secretary of the Union wrote to the Chairman saying that on that day the crane drivers and the associated staff would start work at 1-30 P M instead of at 1 P M and pay respects to the late Mr. Meherally. He requested the Chairman to arrange the schedule of work in the docks accordingly on that day (See Ex. B/30). Thereupon, under instructions from the Chairman, the Chief Engineer put up a notice informing the crane drivers, fitters and other staff of the Hydraulic Establishments on Prince's, Victoria and Alexandra Docks that if they did not resume duty punctually at 1 P.M. on that day (i.e., the 3rd July) after lunch recess they would be marked absent for the whole day (Ex. A-15/2) It is common ground that inspite of this warning the workmen concerned stopped work for half an hour on the aforesaid date from 1 P M. to 1-30 P M. The Port Trust authorities therefore directed that those workmen who stopped work for half an hour on the date mentioned above should not be paid their wages for the whole day including overtime wages. The Union submits that the stoppage of work for half an hour on the date mentioned above was perfectly legal and justified and that the action taken by the Port Trust in respect of the stoppage was vindictive and unwarranted It states that

Mr. Meherally was an outstanding figure and a leading labour leader to whose manifold qualities and achievements, glowing tributes have been paid by men like Mr. Jawaharlal Nehru, the Prime Minister of India, and therefore the workmen were quite justified in stopping work for a short time to honour the memory of such a great man.

109. The Port Trust submits that the stoppage of work for half an hour by the crane drivers in the Alexandra Dock, inspite of the warning of the Chief Engineer, was subversive of all discipline and it is only the crane drivers in the Alexandra Dock that stopped work and not the cranemen in the Prince's and Victoria Docks. It states that if the loss suffered by it and gross insubordination which the action of the cranemen concerned implies be taken into consideration the cranemen concerned deserved dismissal, and in that view, the punishment it inflicted was the most lenient that could be imposed in the circumstances of the case.

110. It is natural that when a great labour leader like Mr. Meherally died, the Port Trust employees felt that they should do something to honour his memory. But that was no justification for the stoppage of work by the cranemen against the orders of the Chairman. Prior to the stoppage of work the Union Officials had seen the Chairman and he had clearly told them that the Port Trust had n concern with Mr. Meherally and that he saw no reason to disturb work in th port in the manner proposed by the Union. The action proposed to be taken by the Union to honour the memory of Mr. Meherally involved a matter of principle. Port work is important work which calls for urgent and immediate attention of the port authorities according to the demand of labour made by the ships arriving. They cannot afford to close the port, though for a short time, to honour the memory of a great labour leader. That would set up a dangerous precedent. The labour could not dictate its own terms and state when they would work and when they would not. The Port authorities did not come in the way of their employees honouring the memory of Mr. Meherally by holding meetings or in any other way they thought fit. The employees could have done so either during lunch hour or after 5 P.M. Stopping work during working hours was not the only way to honour the memory of a great man. I have therefore no manner of doubt that the stoppage of work by the cranemen was unreasonable and could not be justified. The decision in Bihar Fireworks and Potteries Workers' Union and Bihar Fireworks and Potteries Ltd. (1953 Labour Law Journal Vol. I, p. 49 at p. 52) on which the Union has relied, is of no assistance to it in showing that the action taken by the cranemen is proper and justified.

111. Now coming to the question of quantum of punishment I do not think any grievance could be made of it either. As shown above the stoppage of work by the workmen concerned against the clear orders of the Port Trust authorities was subversive of all discipline. The Port Trust had to keep the shore labour as well as stevedore labour idle on the day in question on account of the uncertainty of the crane drivers working on that day. They were therefore put to considerable loss. Marking the workmen concerned absent for a whole day and not paying them the wages for that day was, in my opinion, the least that the Port Trust could have done under the circumstances.

112. Mr. Kavalekar contended on behalf of the Union that the workmen had no idea of the very drastic action proposed to be taken by the Port Trust and that the notice in that connection was put up only during recess so that all workmen had no notice of it. The Union has not called any evidence in support of its contention. Besides, the Union officials had seen the Chairman before the stoppage of work and he had disapproved of the action proposed to be taken by the Union.

113. The further contention of the Union is that the Cranemen and the associated staff stopped work for half an hour on the 3rd July, but the Port Trust authorities punished only the cranemen, and not the allied or associated staff. The Union has put in the affidavit (Ex. B/31) of its Assistant Secretary to this effect. It has made no such averment in its statement of claim. The Assistant Secretary is not clear as to how he got the information referred to in his affidavit or what is the source of his information. The Port Trust has stated in its written statement that the cranemen from the Alexandra Docks stopped work but not those from the Prince's or Victoria Docks. Mr. J. A. Jacques, the Hydraulic Engineer, Alexandra Docks has made an affidavit (Ex. A-17) saying that on 3rd July 1950 he had personally gone round the Docks accompanied by the Deputy Chief Engineer and found that only the cranemen were not working the cranes, but the other staff was doing the normal work assigned to them. I am not prepared to disbelieve the evidence of Mr. Jacques.

114. At a later stage but soon after the hearing of this reference the Union produced the affidavit (Ex. B-37) of one Shivaji Anant More and affidavits (Exs. B-38 to B-41) of four other workmen to prove that even the members of the allied staff in the Alexandra Docks such as fitters, Nowganies, hoistmen, muccadums and mazdoors joined the half an hour strike which took place on the 3rd July 1950 to honour the memory of Mr. Yusuf Meherally. It appears that More was on casual leave from the 3rd July till the 5th July 1950 (See Exs. A-23 and A-24) But curiously enough he states in his affidavit that he and other members of the allied staff had joined the strike that took place on the 3rd July. I am not prepared to believe the affidavits of More and four others referred to above as against the evidence of Mr. Jacques. Assuming that the cranemen and their allied staff took part in the strike, the Port Trust cannot be held guilty of discrimination if they punished only the cranemen for it. The allied staff was subordinate to the crane drivers and were to do only such work as would enable the crane drivers to do their duty. If the Port Trust chose the cranemen, that is, the principal workers, for punishment but not their associated staff they cannot be blamed for it.

115. Lastly, it was urged that none of the crane drivers who was punished as served with a chargesheet and no inquiry of any kind was held against them before inflicting the punishment and therefore the action taken by the Port Trust against the cranemen is unjust and illegal. No such contention has been raised by the Union in its statement of claim.

116 There is no dispute that the cranemen from the Alexandra Docks who alone were punished by the Port Trust authorities had stopped work for half an hour on the 3rd July 1950. The Union's only contention, as stated above, is that besides the cranemen, the other associated staff had also taken part in the strike. It is the Union which wrote to the Chairman on the 3rd July stating that the cranemen and the associated staff would start work at 1-30 P.M. instead of as usual at 1 P.M. on that day in spite of the Chairman's request to the Union not to stop work for any length of time (Ex. B-30). In its reply (Ex. B-30/3) the Union admitted stoppage of work for half an hour by the workmen but pleaded that the wages of those who stopped work should be cut only for the period for which they stopped work and not for the whole day. The cranemen stopped work after lunch recess after their presence had been marked in the muster roll so that the Port Trust could easily find out from it who were the cranemen who went on strike. It is not contended that any individual worker who had not joined the strike has been wrongly punished by the Port Trust. The Union officials who had consultations with the Chairman stated what their views were in the matter of strike. Under such circumstances I do not think that the failure of the Port Trust to serve the cranemen concerned with chargesheets and to hold an inquiry in regard thereto has vitiated the action taken by the Port Trust against those workmen. At the most, it was an irregularity which has not materially prejudiced the cranemen whose wages for one day were cut. I therefore overrule the contention raised by the Union in this behalf and reject the demand.

Demand No. 6

"Withholding of increments for 6—12 months for participation in a strike on 31st August 1950 as a protest against the policy of the Bombay Port Trust and in sympathy with the textile workers."

117. The Union alleges that on account of the anti-labour and anti-Union policy adopted by the Bombay Port Trust administration there was deep resentment among the Dock workers. To give expression to this resentment and, as a token of sympathy with the textile workers who went on a general strike on the 31st August 1950 the Dock workers, it is alleged, joined the strike of the textile workers that took place on that day. The Port Trust authorities punished the workers who took part in the strike by withholding the increments of some for six months and of others for twelve months. The Union states that the Port Trust singled out the crane drivers who took a leading part in the union activities specially for harsh treatment and therefore, while other workmen were served with chargesheets and explanations were called for from them, no chargesheets were served on the cranemen and they were not asked to give their explanations in regard to the strike. Besides, it is stated, that while the Port Trust let off with a mere warning the workers belonging to another Union they imposed the very drastic punishment of withholding the increments of the workers who were members of either this Union or the Bombay Dock Workers' Union, both of which unions have been eyesore to the Port Trust Administration. The Union, therefore, prays that the Trustees of the Port of Bombay should be directed to restore

the increments withheld by them of the workmen concerned and pay them the difference between the wages already drawn by them and the wages which they would have drawn but for the withholding of increments.

118. The Port Trust denies that the strike for one day observed on the 31st August 1950 was a reply to the anti-labour and anti-Union policy said to have been observed by the Port Trust Administration and contends that this plea is an afterthought which occurred to the Union later.

119. The strike that took place on 31st August 1950 was not in contravention of the provisions of sections 21, 23 or 24 of the Industrial Disputes Act, 1947, and therefore it cannot be held to be illegal. It remains to be seen, therefore, whether it was justified. A sympathetic strike which is not intended to advance a current labour dispute or whose aim is not to obtain anything in solution of a current labour dispute is not justified. In Oakes on Organised Labour and Industrial Conflicts (1926) Section 200 it is stated that "a sympathetic strike—that is, one in which the striking employees have no demands or grievances of their own, but strike for the purpose of directly or indirectly aiding others, have no direct relation to the advancement of the interests of the strikers—is an unjustifiable invasion of the rights of the employees" (Ludwig Teller Vol. I, pp. 104-105).

120. Mr. Kavalekar called in aid the decision of the Labour Appellate Tribunal in 1953 Labour Law Journal, Vol. I, p. 49, to show that the strike resorted to by the dockers on the 31st August 1950 was neither unjust nor improper. In that case the Labour Appellate Tribunal has pointed out that a right to resort to a strike as a direct action is a very valuable right acquired by labour after years of struggle and that, if the motive behind it is not perverse or unreasonable, it is not unjust. In that case the workers proceeded on strike to obtain solution of a current labour dispute. In the case before me the workers had been dissuaded by a notice put up sufficiently in advance not to resort to strike and they had been warned of the consequences that would ensue as a result of the breach of the instructions issued by the Port Trust. As pointed out above the sympathetic strike whose aim is not to advance a current labour dispute is unjust and to take resort to such a strike in spite of the clear orders of the Port Trust authorities was, to my mind, unreasonable as such action amounts to insubordination and indiscipline.

121. Mr. Kavalekar, in order to seek assistance from the above decision of the Labour Appellate Tribunal, contended that the strike on the 31st August was not a mere sympathetic strike but it was also intended to secure solution of a labour dispute. The letter (Ex. A-18/13) written by the Union to the Port Trust on the 9th October 1950 leaves no room for doubt that the strike in question was sympathetic strike. The letter states clearly that the Hind Mazdoor Sabha, to which Trade Unions from various industries including this Union were affiliated, called upon its member Unions to go on a sympathetic strike and therefore the sympathy of the dock workers for their fellow workers in the textile industry was expressed by their going on a sympathetic strike on 31st August. 31st August was the date given by the Hind Mazdoor Sabha for the sympathetic strike and therefore the strike took place on that day and it lasted only for a day as a token strike.

122. It is true that in a general meeting of the Union held on the 22nd August 1950 three resolutions were passed. The first condemned the policy of retrenchment followed by the Port Trust in the Engineering Department and the second, the action of the Port Trust in dismissing Mr. Ansurkar, the Assistant Secretary of the Union in organising a protest *demonstration* against the high-handed policy of the Port Trust. The third resolution congratulated the textile workers who had been fighting for their rights and pledged support to them in the strike which they were to undertake. It is clear from these resolutions that although the Union's grievances referred to in the first two resolutions were outstanding at the time of the sympathetic strike, the Union proposed diverse action for the different grievances it had against the Port Trust. They show that the dock workers wanted to stage a demonstration on account of the first two grievances and the third shows that they wanted to support the strike which the textile workers had undertaken in sympathy with them. It nowhere appears on record that the strike which was organised on the 31st August 1950 was to obtain redress of any grievance of the dock workers. In that case, perhaps, the strike would have lasted for more than a day. Even the letter (Ex. B-32/9) written by the Union to the Port Trust and produced by the Union makes it clear that the strike in question was only a sympathetic strike. The letter shows that when there was a general strike in the city in sympathy with textile workers, and when more than a lac of people had joined it, the dock workers alone could not

remain aloof. No doubt the letter states that the "strike in the Engineering section was also observed as a protest against the policy of retrenchment in the Port Trust and the dismissal of Shri Shantaram B. Ansurkar". That shows that the main purpose of the strike was to express sympathy of the dock workers with the textile workers and in addition their ancillary object of the workers of the Engineering Department was to protest against the Port Trust policy of retrenchment and the dismissal of Mr. Ansurkar. When a strike was organised on the 31st August of all the dock workers, the workers of the Engineering section thought that it was the proper occasion for them to stage a demonstration against Port Trust's policy of retrenchment, and the dismissal of Mr. Ansurkar. For that purpose the Union asked its members to join a procession of retrenched workmen on the 31st morning (Ex. B-32/7). If it was the particular two grievances of the Engineering section that led to the strike the workers in the other sections of the Port Trust would not have joined the strike. It is not alleged that the strike was organised in sympathy with the retrenched workers of the Engineering section or with Mr. Ansurkar. It appears to me therefore that the strike on the 31st August 1950 was a sympathetic strike, and not a strike to obtain redress of a current trade dispute.

123. It was next contended for the Union that except the workmen in the workshops the other workers in the Hydraulic Establishment, Dredger Section and Oil Pipe Line, Wadala were not served with any chargesheets and they were punished without any enquiry. The Port Trust has not framed standing orders but in the absence of such standing orders there is no doubt that the principles of natural justice should have been observed by it before inflicting any punishment on the workmen concerned. But we must have regard to the peculiar facts of this case. The Union declared its intention to direct the dock workers to proceed on strike on the 31st August 1950 sometime prior to that date. As soon as the Port Trust authorities were apprised of this intention they issued a notice to all the workers dissuading them from proceeding on strike and warning them of the consequences of not heeding their advice. The notice had not the desired effect and the workmen did go on strike on the 31st August. The Union has admitted in the correspondence carried on with the Port Trust that the Dock workers went on strike on the aforesaid day. It went further and admitted its own responsibility for the same (Ex. A-18/9). It tried to maintain its own as against the view point of the Chairman of the Port Trust.

124. When it was an admitted fact that the workers had gone on strike on the 31st August there was no point in holding an inquiry. In the Hydraulic Establishment at the Alexandra Docks the crane drivers did not return to duty after the lunch interval. They were, therefore, marked absent for the whole day. The crane drivers in the second shift who came to work lifted their tickets but did not do any work but, instead, went home with the tickets. They were also marked absent for the whole day. In the Oil Pipe Line at Wadala the workmen stopped work abruptly at 11 A.M. They were therefore marked absent for the whole day. With regard to the staff at Port Trust Workshops the Chief Engineer called upon the artisans to show cause why disciplinary action should not be taken against them. The staff of the dredgers belong to the flotilla section. They were present on all the vessels but they refused to work on the plea that they would be assaulted when they returned home. They were therefore marked absent for the whole day. There was therefore no possibility of any wrong person being punished. There is no such allegation and no worker has come forth making this grievance.

125. The Union's contention that the Port Trust selected the crane drivers for a specially harsh treatment as they took a leading part in the activities of the Union is not borne out by evidence. It is true that the crane drivers in the second shift were punished by withholding their increments for one year, while the crane drivers in the first shift were punished by withholding their increments for only six months. But the reason for this difference in the matter of punishment is that the crane drivers in the second shift came for work, but deserted their duty and went home with their tickets. The Port Trust therefore took a more serious view of their conduct and inflicted a heavier punishment on them. The reasons for the difference in punishments meted out to the workmen in different sections have been given in the letter (Ex. A-18/8) written by the acting Chief Engineer to the Secretary of the Port Trust on the 7th September 1950. I cannot persuade myself to believe that the cranemen were singled out for a specially harsh treatment. There is also no evidence to substantiate the Union's contention that the workmen who were members of this Union were given a specially harsh punishment.

126. There is no force in the Union's allegation that withholding of increments for 6 or 12 months was unduly harsh. The withholding of increments was without affecting future increments. The cranemen whose increments were withheld for six months lost only Rs. 12 and those whose increments were withheld for a period of one year lost Rs. 24 in all.

127. For the reasons stated above I reject the demand.

Demand No. 8

"Leave Rules according to the recommendations of the Central Pay Commission".

128. The Union states that it wanted the Port Trust Leave Rules to be more liberal than those recommended by the Central Pay Commission but, as the order of reference made by Government suggests that they should be in conformity with those recommended by the Central Pay Commission, it has no objection to the demand being considered in terms of the order of reference; but it must not be taken that it has acquiesced in the terms of reference as now made.

129. The Union's case is that on the 21st May 1947 it made certain demands on the Port Trust one of which was concerned with leave. The Port Trust then promised to reconsider and revise the Leave Rules as soon as the decision of Government on the recommendations of the Pay Commission was known. But the Port Trust revised their Leave Rules without consulting the Union and, about a year after Government's decision on the Pay Commission's recommendations was known in about July 1950, it notified its Revised Leave Rules. The Union then came to know that the Revised Leave Rules of the Port Trust were less favourable than the recommendations of the Central Pay Commission. As an instance in point the Union states that, following the recommendations of the Central Pay Commission Government divided its employees into two groups, namely, those drawing Rs. 60 or less and those drawing more than Rs. 60 per month The leave facilities provided to the employees of the latter class are superior to those provided to the former group. The Union has pointed out that the Port Trust has gone a little further than Government and has drawn the line of demarcation at Rs. 100 and have divided their employees into two groups namely those getting Rs. 100 or less and those getting more than Rs. 100. It therefore happens that the leave facilities enjoyed by the Port Trust employees drawing a salary between Rs. 60 and Rs. 100 are less favourable than the Government employees drawing the same salary. The Union submits that there is no justification for making any invidious distinction between the Port Trust manual workers and non-scheduled staff on the one hand and its clerical staff on the other, as the latter enjoy the same facilities as Government employees. It states that the class of employees mainly affected by the above discriminatory attitude of the Port Trust is the crane drivers who have been picked and chosen by the Port Trust for every kind of discriminatory treatment. The Union therefore prays that the Port Trust should be directed to bring its Leave Rules into line with the recommendations of the Pay Commission in all respects.

130 The Port Trust resists the demand of the Union by stating that the revised Leave Rules for its non-scheduled staff are based broadly on the modifications made by the Railway Board and the Calcutta Port Commissioner in the Leave Rules applicable to their staff of corresponding rank and status. It denies that it specially singled out crane drivers for discriminatory treatment in the matter of Leave Rules. It states that the crane drivers who have been classified as skilled artisans are on scales of pay rising above Rs. 100 and they enjoy the same leave benefits as skilled artisans on Government Railways and, crane drivers who have been classified as semi-skilled staff are on scales of pay not rising above Rs 100 and they get the same leave terms as semi-skilled staff on Government Railways The Port Trust pleads that its Leave Rules are in conformity with the recommendations of the Pay Commission with suitable modifications made therein by the Railway Board and the Calcutta Port Commission.

131. It is not denied that the leave facilities provided by Government to its employees getting more than Rs. 60 are more favourable than those provided to the employees getting Rs. 60 or less. That does not mean that the Port Trust is also bound to accept the same line of demarcation. It states that it accepted the line of demarcation drawn by the Calcutta Port as also by the Railway Board. The Bombay Port Trust has followed the rules and regulations framed by the Calcutta Port Trust in many respects. The scales of pay paid by the Port Trust to its non-scheduled staff including cranemen cannot be compared with those paid by Government to its employees. The dock employees have benefits such as incentive bonus, compensatory allowance, etc., which are not available to Government employees of the same rank and status.

132. There is no substance in the contention that the Port Trust has drawn the line of demarcation at Rs. 100 with a view to victimise the crane drivers. The Port Trust has produced a list (Ex. A-20/5) to show that there is a large number of categories of non-scheduled staff besides the crane drivers whose pay is between Rs. 60 and Rs. 100 and who do not get the same leave privileges as those drawing above Rs. 100. There are some crane drivers who draw a salary of more than Rs. 100.

133. It was contended on behalf of the Union that the Port Trust has made an invidious distinction between its scheduled and non-scheduled staff inasmuch as it has accepted the Pay Commission's recommendation and provided to the scheduled staff better leave facilities than those provided to the non-scheduled staff. But the non-scheduled staff cannot expect the same facilities in all respects as the scheduled staff. Their pay scales are based upon different principles and on different grounds. Even under the Factories Act a distinction is drawn between factory employees and clerical staff. I cannot therefore accede to the demand made by the Union.

Demand No. 9

"Rent should not be calculated on compensatory allowance, but only on the basic wage."

134. The Union's case on this demand is that according to an agreement arrived at between it and the Port Trust authorities in 1947 the latter are entitled to deduct from the wages of workmen provided with quarters by the Port Trust 10 per cent. of their basic wages but, after the agreement continued in force for about 3 years, the Port Trust suddenly started deducting rent at the rate of 10 per cent. of their pay plus compensatory allowance in about the beginning of 1951. The Port Trust did this without consulting the Union. When the Union made a complaint about this to the Port Trust the latter replied that it had done so, because Government auditors had raised an objection that the method of deducting house rent only on basic pay excluding compensatory allowance was wrong in principle. The Union submits that in the absence of standing orders the Port Trust was bound to follow the agreement arrived at in 1947.

135. The Union points out that in granting house rent to its employees who have not been provided with quarters the Port Trust calculates house rent only on basic pay, and not on basic pay plus compensatory allowance. It submits that there is no consistency in the matter of house rent allowance granted by the Port Trust and the deduction of rent for the quarters provided by them. The Central Pay Commission, it is alleged, has recommended that house rent allowance should be paid to Government servants on the basis of their basic pay, and not on the basis of their basic pay plus compensatory allowance. The Union therefore prays for a direction to the Port Trust that they should deduct house rent only on the basic pay and not on basic pay and compensatory allowance.

136. The Port Trust admits that it sanctioned compensatory and house rent allowances on the scales sanctioned by Government with effect from 1st January 1947.

137. The rules framed by Government for the recovery of rent when Government provides quarters to its staff direct that rent should be paid on "emoluments" which include compensatory allowance which is granted as a fixed addition to pay. The Port Trust states that in July 1950 Government auditors suggested that it should follow the procedure followed by Government for recovery of rent and, therefore, the Trustees had to accept their suggestion. It states that it is not aware of any agreement with the Union that it should recover rent only on basic pay for quarters provided to their employees. The Port Trust has pointed out that under the Fundamental Rules of the Government of India, compensatory allowance is counted as part of emoluments and the Port Trust follows those rules.

138. The Union has not adduced any evidence to substantiate its contention that there was an agreement between it and the Port Trust that the latter should deduct house rent equivalent to only 10 per cent. of the basic pay of its employees and not on the compensatory allowance also. It is true that under the rules governing the occupation of Port Trust residential quarters the recovery of rent for Port Trust quarters was being made at 10 per cent. of pay and the term "pay" meant the amount drawn by an officer or servant as pay and included officiating pay, personal pay, special pay, etc., but did not include any allowance. But it must be remembered that at the time when the rules with regard to

recovery of rent for Port Trust quarters were framed no compensatory allowance was being paid to Port Trust employees. It was from 1st January 1947 that the Port Trust began to pay compensatory allowance on the same scale as Central Government servants. When Government or the Railway authorities pay compensatory allowance to their employees they recover 10 per cent. of their pay and such allowance as rent for the quarters provided by them. That is in accordance with Fundamental Rule 45 A IV according to which rent for residential quarters provided by Government is standard rent or 10 per cent. of a Government servant's pay, whichever is less (Ex. A-21/1 & 2). Compensatory allowance, according to Fundamental Rule 45C, is included in "emoluments" referred to in the above rule. After the Port Trust started paying compensatory allowance it should have recovered house rent not only on the basic pay but also on the compensatory allowance and that is what the Assistant Auditor Outside Audit, pointed out to the Port Trust in his memorandum dated 6th July 1950 (Ex. A-21/3). The Trustees of the Bombay Port Trust therefore accepted the recommendation of the Assistant Auditor and their own Chief Accountant in a meeting held on the 31st October 1950 and resolved to recover house rent at the rate of 10 per cent. of the total emoluments drawn by a Port Trust employee according to Fundamental Rule 45C or the assessed standard or the concessional rent whichever is less. When Fundamental Rules have been made applicable to the Port Trust it is just and proper that they should recover house rent in accordance with those rules. Besides, while framing rules for charging 10 per cent. of pay as house rent the Port Trust had reserved to themselves the right to revise that rate whenever necessary.

139. From the appendix to T. R. No. 574, dated 29th July 1947 (Ex. A-21/5) it appears that the Port Trust pays a fixed house rent allowance to its non-gazetted staff drawing salary upto Rs. 300 per month and it is only to those getting a salary higher than Rs. 300 that it pays the difference between the actual rent paid and 10 per cent. of pay, subject to a maximum of 10 per cent. of pay. A large majority of the non-gazetted staff, it is clear, are paid house rent at a fixed rate and they are not affected by the change made by the Port Trust in the matter of levy of house rent on the recommendation of the Assistant Auditor. I do not think that the employees concerned in this reference, at least a substantial majority of them, are affected by the change in question.

140. According to section 58A of the Bombay Port Trust Act, 1879 (as amended), the Board of Trustees are bound to take into immediate consideration any defects or irregularities that may be pointed out by the Auditors and pass such orders thereon as the Board thinks fit and send a report of the action taken by them to the Central Government. It is in accordance with this section that the Port Trust took action in the matter of recovery of house rent.

141. Section 58A(2) of the Bombay Port Trust Act lays down that if there is any difference of opinion between the Board and the Auditors on any point included in the audit report and the Board feels unable to accept the recommendations made by the Auditors on such points, the Board should refer the matter to the Central Government for final orders. Mr. Kavalekar urged that in accordance with this provision, the Trustees should have referred the point raised by the Assistant Auditor to the Central Government for final orders. But such a reference is contemplated only when there arises any difference of opinion between the Trustees and the Auditor on any of the points raised by the latter. No such difference arose in this case. The Assistant Auditor had cited sufficient authority in support of his view which could not be negatived. Besides, it would have been futile for the Trustees to differ from the Auditor when the rules applied by the Central Government to its own servants were in favour of the Auditor's view.

142. In the result it is clear that the demand cannot be entertained. It is therefore rejected.

(Sd.) S. H. NAIK,
Industrial Tribunal.

BOMBAY;
The 24th July 1953.

(Sd.) K. R. WAZKAR, Secretary.

[No. LR.2(305).]

P. S. EASWARAN, Under Secy.

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